

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

AQUA ILLINOIS, INC.	)	DOCKET NO.
	)	05-0071
Proposed general increase in water	)	
and sewer rates for the Woodhaven	)	
Water Division. (Tariffs filed on	)	CONSOLIDATED
December 22, 2004)	)	
-----	)	
	)	
AQUA ILLINOIS, INC.	)	DOCKET NO.
	)	05-0072
Proposed general increase in water	)	
rates for the Oak Run Water	)	
Division. (Tariffs filed on	)	
December 29, 2004)	)	

Springfield, Illinois  
July 28, 2005

Met, pursuant to notice, at 9:00 A.M.

BEFORE :

MR. JOHN ALBERS, Administrative Law Judge

APPEARANCES :

MS. SARAH N. GALIOTO  
Sonnenschein, Nath & Rosenthal  
8000 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606

(Appearing on behalf of Aqua Illinois,  
Inc.)

SULLIVAN REPORTING COMPANY, by  
Jami Tepker, Reporter  
Ln. #084-003591



1	<u>I N D E X</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	JACK SCHREYER				
4	By ALJ Albers		224		
5	WILLIAM MARR				
6	By Ms. Buell	238			
7	CHERI HARDEN				
8	By Ms. Galioto	241			
9	JEFFREY HICKEY				
10	By Mr. Balough	248			
11	MICHAEL DAVISON				
12	By Mr. Balough	270			
13	By Ms. Galioto		279		
14	By ALJ Albers		284		
15	BURMA JONES				
16	By Ms. Buell	288		310	
17	By Ms. Galioto		293		
18	By Mr. Balough		308		
19	By ALJ Albers		309		
20	BONITA PEARCE				
21	By Ms. Buell	314		375	
22	By Ms. Galioto		319		383
23	By Mr. Balough		372		
24	By ALJ Albers		373		
25	JANIS FREETLY				
26	By Ms. Buell	385			
27	By Ms. Galioto		388		
28					
29					
30					
31					
32					

	EXHIBITS	MARKED	ADMITTED
1			
2	Aqua Exhibit 11	22	
	Aqua Cross 1	305	305
3	Aqua Cross Group 2	371	371
	Aqua 1.0 WS, 1.1 through 1.4 WS	e-Docket	410
4	Aqua 1.0 OR, 1.1 through 1.4 OR	e-Docket	411
	Aqua 5.0, A	e-Docket	411
5	Aqua 7.0 Revised,		
	7.1 through 7.10, A	e-Docket	411
6	Aqua 2.0 OR, 2.1 and 2.2	e-Docket	413
	Aqua 2.0 WS, 2.1 and 2.2 WS	e-Docket	413
7	Aqua 2.0 OR, A through D	e-Docket	414
	Aqua 2.0 WW, 2.1 and 2.2 WW	e-Docket	414
8	Aqua 6.0, 6.1, A through D	e-Docket	415
	Aqua 8.0, 8.1 OR,		
9	8.1 WW, 8.1 WS, A through D	e-Docket	415
10	Woodhaven WA 1.0,		
	1.1 through 1.11	e-Docket	269
11	Woodhaven 2.0, 2.01 and 2.02	e-Docket	269
12	ORPA 1.0 Revised, MD-1 and MD-4	e-Docket	287
13	Staff 2.0, 2.01, 2.02, 2.03,		
	2.05 OR; 2.01 and 2.05 WW;		
14	2.01, 2.03, 2.04, 2.05 WS	e-Docket	313
	Staff 7.0C, 7.01 WS, 7.03 WW		
15	And WS, A, B, and C	e-Docket	313
	Staff 1.0, 1.01 through 1.08 WS,		
16	1.01 through 1.08 WS,		
	A through Q	e-Docket	384
17	Staff 6.0, 6.01 through 6.10 WW,		
	6.01 through 6.10 WS	e-Docket	384
18	Staff 3.0, 3.1 through 3.11	e-Docket	389
	Staff 8.0, 8.01 and 8.02	e-Docket	389
19			
20			
21			
22			

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PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket Number 05-0071 and Docket Number 05-0072.

These dockets concern a proposed general increase by Aqua Illinois, Inc., for its Woodhaven Water and Sewer Divisions, so to speak, and its Oak Run Water Division.

May I have the appearances for the record, please.

MS. GALIOTO: Appearing on behalf of Aqua Illinois, Incorporated, Sarah Galioto of the law firm Sonnenschein, Nath, & Rosenthal, 8000 Sears Tower, Chicago, Illinois 60606. Telephone number, (312) 876-8000.

MR. BALOUGH: Representing the Woodhaven Association and the Oak Run Property Owner's Association, Richard Balough, 53 West Jackson Boulevard, Suite 956, Chicago, Illinois 60604.

MS. BUELL: Appearing on behalf of Staff witnesses of the Illinois Commerce Commission, Linda M. Buell, 527 East Capitol Avenue, Springfield, Illinois 62701.

1 And my telephone number is area code (217) 557-1142.

2 MR. MILOSEVIC: And also appearing on behalf of  
3 Staff of the Illinois Commerce Commission, Vladan  
4 Milosevic, 160 North LaSalle, Suite 800, Chicago,  
5 Illinois 60601. My phone number is (312) 793-8184.

6 JUDGE ALBERS: Thank you.

7 Let the record reflect that there are no  
8 others wishing to enter an appearance.

9 We will pick up today with Mr. Shreyer on  
10 behalf of the Company. When we left off yesterday, we  
11 were discussing an offer of proof.

12 Before we go any further, I've given that  
13 some more thought and I have a question for you,  
14 Ms. Galioto. The DR responses, like, the actual DR  
15 response referring to those many invoices, were those  
16 part of surrebuttal testimony?

17 MS. GALIOTO: The DR responses themselves were  
18 not. I have with me today the e-mails that show when  
19 they were served the actual narrative responses. The  
20 narrative response just pretty much identifies the  
21 Bates range,  
22 And then the documents are provided with the Bates

1 range numbers.

2 Now, the only thing we included within the  
3 surrebuttal testimony were the Bates range numbers.  
4 Because they are Bates stamped, we thought it was  
5 fairly obvious that they are the same documents.

6 And just to let you know, we also -- I don't  
7 have a copy of it with me yet. I hope you can bear  
8 with me. I'm trying to work out of a hotel room with  
9 somebody helping me in Chicago and the hotel's fax  
10 machine broke down.

11 I've been trying to get faxed to me  
12 documentation as to how the surrebuttal was filed with  
13 this information. And once I do get it, I'll share it  
14 with you. I think it's coming in an overnight.

15 But my understanding is the Attachment D  
16 which was the invoices were filed in five parts. And  
17 they were also sent out as five separate attachments,  
18 and they are divided as follows to be easy to  
19 recognize.

20 Oak Run --

21 JUDGE ALBERS: Before we go any further, the  
22 reason I asked for the DRs is that after having given

1     this some more thought last night, it occurs to me  
2     that an offer of proof is to essentially, you know,  
3     offer what would have been put into evidence had there  
4     not been any objection and striking of that particular  
5     evidence.

6             I am not comfortable with adding DR  
7     responses, the actual cover pages, so to speak, and  
8     any e-mails that were not originally part of the  
9     surrebuttal testimony. It seems to me to be adding  
10    more material to the record as opposed to simply  
11    offering what otherwise would have gone into evidence  
12    had Ms. Buell not made her objection.

13            MS. GALIOTO: Your Honor, I think it's important  
14    as an offer of proof to demonstrate one of our grounds  
15    for appealing your decision.

16            JUDGE ALBERS: Well, you can make that argument I  
17    suppose in your -- you know, to the Commission if  
18    you're going to appeal the decision. That's fine.

19            And -- but as far as what the offer of proof  
20    should be is that if I get flipped by the Commission  
21    or for that matter an appellate court flips the  
22    Commission, Exhibit D and the testimony stricken in

1     that surrebuttal testimony would otherwise fall back  
2     into the record, so to speak, for the basis of the  
3     decision.

4             And to add -- in my opinion to add numerous  
5     DR responses and e-mails that were otherwise not  
6     offered as part of the surrebuttal exhibit would be  
7     inappropriate.  It's supplementing your position.

8             MS. GALIOTO:  But it's not -- it's going in as an  
9     offer of proof to demonstrate what time these  
10    documents were served on the other parties so that I  
11    can demonstrate that there was no prejudice to the  
12    parties by including these within the surrebuttal  
13    testimony.

14            And that's important to include within an  
15    offer of proof.  I have no other way of getting that  
16    onto the record.

17            And Your Honor, I had no idea this  
18    information was going to be objected to prior to  
19    Mr. Schreyer being on the stand yesterday.  If there  
20    were some indication in advance, perhaps I could have  
21    prepared this differently, but --

22            JUDGE ALBERS:  Well, I understand, but you

1     yourself made some objections at the last minute as  
2     well. I appreciate that e-mail as a courtesy on  
3     Monday or Tuesday, whichever day. I don't recall.

4             But everyone here, you know, under the rules  
5     you can make your objections, you can wait till the  
6     hearing to make your objections. Personally I think,  
7     you know, a lot of your clients are better served by  
8     making your objections long before the hearing. That  
9     goes to everyone.

10            But as long as we're talking about this offer  
11     of proof right now, that's my decision. I understand  
12     what you're saying. I disagree and I do apologize for  
13     you having to spend time last night working on that  
14     after I said what I said yesterday.

15            But I'm afraid that allowing you to do what  
16     we discussed yesterday and what you want to do now  
17     this morning will just compound the error that I  
18     believe I made yesterday in suggesting that you be  
19     able to include that information.

20            MS. GALIOTO: Is the -- what do you suggest the  
21     offer of proof be? Testimony that was stricken?

22            JUDGE ALBERS: I suggest your offer of proof be

1 the testimony that was stricken and that attached  
2 Exhibit D, 'cause that otherwise would have been on  
3 the record had there not been the objection and the  
4 ruling.

5 MS. GALIOTO: Well, can we stipulate, then, that  
6 that's the offer of proof? I mean, it's already  
7 written and has been filed on e-Docket, so.

8 JUDGE ALBERS: I would suggest that if you have --

9 MS. GALIOTO: Do you want me to walk through the  
10 questions with him verbally?

11 JUDGE ALBERS: Well, as I recall, there were  
12 several pages on that latter part. I would suggest  
13 you take those X number of pages and attach that to  
14 the Exhibit D that I believe looks like you might have  
15 a copy of Exhibit D there in front of you.

16 MS. GALIOTO: No, I do not have a copy of Exhibit  
17 D. This contains what Exhibit D contains, but --  
18 well, I guess I can pull it out of my personal working  
19 copy, but I need to work possibly from that today.

20 JUDGE ALBERS: You can keep that for today. We'll  
21 just mark that and refer to it I think we're up to  
22 Aqua Exhibit 11. Does that sound right? 11?

1 MS. GALIOTO: Yes. It would be Aqua Exhibit 11.

2 (Whereupon Aqua Exhibit 11

3 was marked for identification.)

4 MS. GALIOTO: I need to put on the record my  
5 objection to not being able to present information  
6 into the record to establish that this was timely  
7 provided and provided well in advance for Staff to  
8 have time to review, contemplate on, and assess prior  
9 to the information coming into the record.

10 It is -- within the Commission, the e-Docket  
11 filing does not submit anything into the record. It  
12 is provided in advance of the hearing. It allows  
13 parties to have an opportunity to see what other  
14 parties are going to be testifying to. It's not  
15 actually admitted into the record until the  
16 evidentiary hearing takes place.

17 So I think that whether it was in the  
18 rebuttal or the surrebuttal, both of those pieces were  
19 offered into evidence at the exact same time. I think  
20 it was important that I be able to show service of  
21 this information at the time it was served in order to  
22 demonstrate on appeal whether or not any party

1       suffered any prejudice.

2               So I do need to state my objection to not  
3       being able to present that information today.

4               JUDGE ALBERS:   Okay.   Understood.

5               Anything further on the offer-of-proof  
6       question?

7               Mr. Schreyer, take the stand, sir.   I believe  
8       there might have been a few follow-up questions, at  
9       least from me, separate from the offer of proof.

10               JACK SCHREYER

11       called as a witness herein, having been previously  
12       duly sworn, was examined and testified as follows:

13               EXAMINATION

14       BY JUDGE ALBERS:

15               JUDGE ALBERS:   There's no questions from you,  
16       Mr. Balough, or you, Ms. Buell?

17               MS. BUELL:   No, Your Honor.

18               MR. BALOUGH:   No questions.

19               JUDGE ALBERS:   Okay.   I just have a few,  
20       Mr. Schreyer.

21               Q.    With regard to the Oak Run reverse-osmosis  
22       plant, just so I'm clear, if the Commission concludes

1     that the Oak Run reverse-osmosis plant won't be built  
2     in 2007, you're recommending that the cost of a pilot  
3     study and engineering plan be put into account 675,  
4     miscellaneous expenses?

5           A.     That's correct, Your Honor.

6           Q.     Okay.  If that occurs, would such costs be  
7     included in the rate base in this proceeding?

8           A.     It would be amortized over ten years to  
9     expenses.

10          Q.     Okay.  And just for my own edification, you  
11     indicated in your surrebuttal on page 9 that  
12     foreclosure costs approximately \$2,000 per account.  
13     And I was just wondering, just curious what accounts  
14     for \$2,000 in costs for a foreclosure?

15          A.     I believe Witness Bunosky had mentioned some  
16     of the costs of foreclosure.  I've just gathered the  
17     costs and presented it.

18                 JUDGE ALBERS:  All right.  Okay.  Fair enough.

19                         Do you have any redirect?

20           MS. GALIOTO:  No, I do not, Your Honor.

21           JUDGE ALBERS:  Thank you, Mr. Schreyer.

22           THE WITNESS:  You're welcome.

1 (Witness excused.)

2 JUDGE ALBERS: As indicated earlier, I'll hold off  
3 on any of this other testimony until the pending  
4 motions you're going to make regarding the  
5 Intervenor's testimony.

6 So anything further from the Company this  
7 morning?

8 MS. GALIOTO: Your Honor, there still has not been  
9 a ruling on whether certain portions of Mr. Bunosky's  
10 testimony will be stricken or not.

11 If they are stricken, one of those items  
12 pertains to the rate that was charged for sewer over  
13 the course of the last five years and whether or not  
14 that was in compliance with the tariff on file.

15 And I would like to recall Ms. Harden to ask  
16 her her opinion on that matter if it is stricken from  
17 Mr. Banoksy's testimony.

18 JUDGE ALBERS: Okay. Before we get to that, just  
19 occurred to me, was there another part of  
20 Mr. Schreyer's testimony that you wanted to make an  
21 offer of proof of, the shorter segment of his first  
22 amended rebuttal?

1           MS. GALIOTO:  We -- no.  We are not going to -- we  
2   will accept his original testimony in that regard.

3           JUDGE ALBERS:  I didn't want to forget about  
4   that.

5           MS. GALIOTO:  Your Honor, the only thing was in  
6   his original testimony we disagreed with Staff, in his  
7   amended we agreed with them in part.  So we're just  
8   back to disagreeing.  By taking out the amended, we're  
9   back to disagreeing with Staff on that.  So we'll go  
10  with that.

11          JUDGE ALBERS:  All right.  Then back to  
12  Mr. Bunosky.  Let me pull his testimony here before I  
13  say anything further.

14          MR. BALOUGH:  Your Honor, I guess I'm having a  
15  little problem following this.  They want to strike  
16  her testimony concerning the sewer, but then they want  
17  to recall a witness to put the testimony back in.  
18  It's their motion to strike.  If they want that in  
19  there, they can withdraw that motion to strike.

20                 I find it highly unusual that they want to  
21  have separate bites at the apple here and different  
22  issues.  It was an issue we raised.  If it gets

1 stricken, then I'm at a loss why they then want to  
2 recall a witness and put it back in.

3 JUDGE ALBERS: I'm going to start at the beginning  
4 here with Staff's objection to Mr. Bunosky's second  
5 amended memo and go from there.

6 MS. GALIOTO: And Your Honor, with regard to that,  
7 just a follow up. Perhaps I should include both of  
8 them now since you're looking at the testimony.

9 The second portion of Mr. Bunosky's testimony  
10 pertained to contributions that the association made  
11 in 1998 for a, I believe it was a newer main and lift  
12 station and how that was accounted for. And if that  
13 portion is stricken, I would like to also ask a Staff  
14 witness about those issues.

15 I'm not -- I'm assuming it's Burma Jones who  
16 would be the appropriate Staff witness, but she has  
17 the data requests that related to it.

18 But -- and the reason I would need to do  
19 that, if we knew in advance that this stuff was going  
20 to be stricken, I would have found a different way  
21 during the testimony phase to work around this.

22 But knowing at the hearing that this is going

1 to happen, I would like to do that.

2 And to Mr. Balough's point, if this stuff is  
3 stricken from his witness' testimony, the issue is  
4 gone. I'd see no reason to address it. But until we  
5 know whether or not it is in fact stricken from his  
6 witness' testimony, we do need to respond to it, which  
7 why my witnesses did respond to it within their  
8 testimonies.

9 MS. BUELL: Your Honor, to the extent that a Staff  
10 witness such as Ms. Harden has already been on the  
11 stand twice, I might add, Staff believes it's  
12 inappropriate to recall her.

13 This is Aqua's problem. It's not Staff's  
14 problem and Staff shouldn't have to recall the witness  
15 three times to remedy Aqua's problem.

16 With respect to asking Ms. Burma Jones  
17 questions that are beyond the scope of her testimony,  
18 Staff would also have to object to that.

19 MR. BALOUGH: Your Honor, Aqua had our  
20 testimony. They were doing rebuttal, surrebuttal. If  
21 they thought these issues needed to be addressed in a  
22 different way, their counsel certainly is capable of

1     being able to formulate questions in advance.

2             They don't have to suddenly recall witnesses  
3     in this hearing that somehow they now discover, oops,  
4     they get the testimony stricken because based on their  
5     own motion to strike.

6             It seems to me they're saying, We want to  
7     strike the testimony. If we get it stricken, we want  
8     to put it back in the way we want to put it back in.  
9     That is highly improper.

10            They need to live by the rules. If they want  
11    to strike our testimony, they shouldn't have the right  
12    then to come back in and file new testimony.

13            MS. GALIOTO: Your Honor, with all due respect,  
14    that's not what I requested happen. Perhaps it makes  
15    sence to look at my objections to Mr. Hickey's  
16    testimony first and see what comes out.

17            JUDGE ALBERS: I'll be honest with you, the  
18    discussion of whose testimony has been stricken and  
19    then calling people back, start at the beginning, I  
20    want to make absolutely clear in my mind what it is  
21    you're requesting. Didn't follow what you were asking  
22    for, essentially.

1           Staff, yesterday you moved that Mr. Banoksy's  
2   original rebuttal testimony be the testimony that's  
3   used.

4           MS. BUELL: That's correct, Your Honor. Staff  
5   moved to strike the testimony that was offered  
6   yesterday, which was the second amended rebuttal  
7   testimony and also the first amended rebuttal  
8   testimony and in its place offer the originally filed  
9   rebuttal testimony of Mr. Bunosky.

10          JUDGE ALBERS: Okay.

11          MS. GALIOTO: And --

12          JUDGE ALBERS: Go ahead.

13          MS. GALIOTO: To that point, Your Honor, I think I  
14   stated everything on the record yesterday. But again,  
15   I did double-check on filing times for those pieces.

16                 And the original testimony was filed the day  
17   required by Your Honor. It posted at 12:01 a.m. the  
18   following day because the final upload on e-Docket was  
19   a little bit after 5:00.

20                 Parties were served that day. They might  
21   have already left by 5:00, but if they'd been there at  
22   4:55 and it came in, I have a feeling they wouldn't

1     have looked at it till the next day.

2             We filed our first amended the very next  
3     day. All parties still had 15 working days to review  
4     first amended.

5             Our second amended was filed the following  
6     Tuesday, the 21st. And everyone still had 12 working  
7     days to review that information.

8             Association counsel represented yesterday  
9     that they were not prejudiced by these amended  
10    filings. They had an opportunity to review it and  
11    respond to it within their rebuttal testimony as they  
12    saw fit.

13            And to the extent that your ruling would be  
14    premised upon whether or not I requested leave of Your  
15    Honor to file amended testimony, I would apologize for  
16    any oversight in that regard.

17            And I would ask to make an oral motion to  
18    file instanter today as today is the day that these  
19    items would be going into the evidentiary record. And  
20    parties again have had notice of these about the first  
21    amended since June 16th and of the second amended  
22    since June 21st.

1           So I would make an oral motion to file  
2   instanter today the June 21st testimony.

3           JUDGE ALBERS:   Well --

4           MS. BUELL:   Your Honor, Staff would object to  
5   that.  You've already made your ruling.  It's  
6   inappropriate.

7           JUDGE ALBERS:   I made the ruling yesterday on  
8   Mr. Schreyer's testimony.  It seems a bit late in the  
9   game to make the ruling today.

10           I am troubled by a lack of leave to amend,  
11   request for leave to amend testimony.  Recognizing the  
12   first amended came in the next day, I'm still  
13   concerned by that.  To me it just opens the door to a  
14   lot of problems in the future if we allow things to go  
15   on.

16           MS. GALIOTO:   Your Honor, one of my concerns is  
17   that there should be a consistent manner in which this  
18   type of item is held throughout the Commission.  And  
19   counsel for Staff identified one of your rulings  
20   several years ago on this issue.

21           I've practiced before the Commission for a  
22   number of years, and parties routinely file in my

1     experience amended testimony. And it it never an  
2     issue and it is allowed into the record.

3             So I find myself very surprised by entering  
4     into a hearing where all of the sudden this rule is in  
5     effect and it's different than what I have experienced  
6     previously before the Commission.

7             And so in terms of consistency, yes I do  
8     think that's important. I also think it's important  
9     to recognize precedent before the Commission. With  
10    all due respect to Your Honor, you know, it was your  
11    ruling. It wasn't a Commission decision on that issue  
12    as far as I know. I didn't jot down the docket  
13    number.

14            But you know, I think, you know, even with  
15    normal Commission decisions they are not  
16    precedential. Everything should be looked at on a  
17    case-by-case basis, and that is established law of the  
18    Commission.

19            JUDGE ALBERS: Understood.

20            However, as I indicated, if we allow this to  
21    continue, as you've suggested, someone could walk in  
22    here the day before the hearing and file amended

1 testimony and expected that to be admitted because  
2 technically it wasn't offered until the day of the  
3 hearing.

4 MS. GALIOTO: But Your Honor, I think the  
5 distinction with that situation in that instance a  
6 party could be prejudiced by the late request because  
7 they have not seen it until the day before the  
8 hearing. In this case there is no showing of  
9 prejudice.

10 And I think the showing of prejudice is the  
11 important thing to focus on here because if you --  
12 that's the real substance. That's why it matters.  
13 And so if you only look at, you know, the form whether  
14 or not it was requested, you're putting form over  
15 substance.

16 And I think, you know, the Commission wants  
17 to have a full and complete record. Staff has always  
18 argued to have a full and complete record before the  
19 Commission. I think it's doing the public a  
20 disservice to ignore testimony on two important issues  
21 in the case.

22 JUDGE ALBERS: Understood.

1           And if you feel that strongly, you can appeal  
2   the ruling. As it stands today, though, the motion to  
3   strike is granted.

4           MS. GALIOTO: Will I be able to address any of  
5   those issues with the Staff witness? And again, I do  
6   believe that both of these issues are within the scope  
7   of their review.

8           They might not have filed testimony on  
9   something. Burma Jones definitely has a data request  
10  with regard to one of the issues and we gave her an  
11  answer that is on point with one of the issues. She  
12  definitely investigated the matter.

13          On the other one, again, tariff compliance  
14  would definitely be within Ms. Harden's scope of  
15  review. And I -- again, you know, given the time that  
16  I'm hit with this, I think it is important for me to  
17  be able to examine those witnesses.

18          I don't expect anything lengthy, but I would  
19  like to know their opinions on those two issues.

20          JUDGE ALBERS: When Ms. Jones takes the stand, you  
21  can ask any questions you believe are appropriate  
22  subject to any objections. And I'll hear what the

1 question is and hear the objection then.

2 As far as Ms. Harden, I'm trying to recall  
3 everything in her testimony. And you're looking for  
4 tariff-compliance areas basically?

5 MS. GALIOTO: Ms. Harden did not find it necessary  
6 apparently to testify on the issue, but it is clearly  
7 within the scope of what reviews she would have  
8 conducted as the rate-design-tariff expert on behalf  
9 of Staff in this proceeding.

10 MS. BUELL: Your Honor, it's not within the scope  
11 of her testimony and that is what is appropriate to  
12 look at.

13 JUDGE ALBERS: Which area did you want to --

14 MS. GALIOTO: The 130 percent, Your Honor.

15 JUDGE ALBERS: And whether or not she believes: --

16 MS. GALIOTO: I would like to ask her if she did  
17 review it, and if she did, I would like to ask her  
18 opinion, similar to your examination of Mr. Marr  
19 yesterday.

20 JUDGE ALBERS: Oh, yeah. I recall.

21 Ms. Harden even here today?

22 MS. BUELL: She's not in the courtroom, Your

1 Honor. I have not seen her.

2 JUDGE ALBERS: Okay. Off the record.

3 (Whereupon there was then had  
4 an off-the-record discussion.)

5 JUDGE ALBERS: I will allow that request. If  
6 she's here and can be available, we will allow you to  
7 pursue that issue if she even knows anything about  
8 that area.

9 While someone is getting her, why don't we  
10 hear from Mr. Marr to allow him to correct his  
11 statement as you indicated.

12 MS. BUELL: Thank you, Your Honor. Staff recalls  
13 William Marr to the stand.

14 WILLIAM MARR  
15 called as a witness herein, having been previously  
16 duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. BUELL:

19 Q. Good morning, Mr. Marr.

20 A. Good morning.

21 Q. Mr. Marr, do you recall yesterday when ALJ  
22 Albers asked you about the number of Aqua's sewer

1 rules tariff?

2 A. Yes, I do.

3 Q. Do you have a correction to make now to the  
4 answer that you gave him yesterday?

5 A. Yes, I do.

6 Q. And what is that correction?

7 A. The correct rules, regulations, and  
8 conditions of service tariff number for sewer service  
9 Illinois Commerce Commission Number 48, Section Number  
10 1, not Illinois Commerce Commission Number 47, Section  
11 Number 1.

12 Illinois Commerce Commission Number 47,  
13 Section Number 1 is the rules, regulations, and  
14 conditions of service tariffs for water service.

15 Q. Now, Mr. Marr, yesterday the ALJ also asked  
16 you if you knew the specific page numbers involved.  
17 Do you know those page numbers now?

18 A. Yes, I do.

19 Q. What are they?

20 A. First of all, the definition of company sewer  
21 lateral is contained on Illinois Commerce Commission  
22 Number 48, Section number 1, Original Sheet Number 4,

1 under Section 1G, Definitions.

2 The definition of customer sewer --

3 JUDGE ALBERS: If you can just give me the page  
4 numbers, save myself some time.

5 THE WITNESS: Okay. The appropriate page numbers  
6 are Sheet Number 4, Sheet Number 6, Sheet Number 17,  
7 and Sheet Number 28.

8 JUDGE ALBERS: Okay.

9 MS. BUELL: Q. Do you have any further  
10 corrections to make, Mr. Marr?

11 A. No.

12 MS. BUELL: Thank you, Your Honor.

13 JUDGE ALBERS: Thank you for bringing that to my  
14 attention.

15 Do you have any follow-up questions? No?

16 All right.

17 Thank you, Mr. Marr.

18 (Witness excused.)

19 (Whereupon there was then had  
20 an off-the-record discussion.)

21 JUDGE ALBERS: Ms. Harden has joined us.

22 Ms. Harden, you're still under oath from

1 yesterday.

2 MS. HARDEN: Yes.

3 JUDGE ALBERS: Okay.

4 CHERI HARDEN

5 called as a witness herein, having been previously  
6 duly sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. GALIOTO:

9 Q. Ms. Harden, did you review the direct  
10 testimony of Woodhaven Association witness Mr. Hickey  
11 in this proceeding?

12 A. It's been quite some time that I did. I do  
13 not have it with me, I don't think.

14 Q. Okay. Let me give you a copy of it.

15 Ms. Harden, if you could turn to pages 16 and  
16 17 of Mr. Hickey's direct testimony that I just handed  
17 you. And please, you can take the opportunity to  
18 review it.

19 MS. BUELL: Are there any particular lines that  
20 you're referring to on pages 16 and 17?

21 MS. GALIOTO: Well, I just gave up my copy.

22 Q. 'M referring to his testimony with regard to

1 the sewer rates of 130 percent of the water rate. And  
2 it's most likely that it starts at the bottom of 16  
3 and continues to the top of 17.

4 Do you recall that testimony?

5 A. Vaguely.

6 Q. Having had a chance to look at it this  
7 morning, do you understand it?

8 A. It's not really an issue that I delved into  
9 in depth in my preparation for my testimony.

10 Q. Okay. Do you know what Aqua's tariff rate  
11 was for Woodhaven sewer --

12 MS. BUELL: Objection, Your Honor. She just said  
13 that she hasn't reviewed the testimony in awhile.  
14 She's not familiar with it. These questions are  
15 clearly beyond the scope of her testimony.

16 JUDGE ALBERS: I want to hear the rest of  
17 Ms. Galioto's question before --

18 MS. BUELL: I'm sorry.

19 MS. GALIOTO: Thank you, Your Honor.

20 Q. Do you know what Aqua's rate was for  
21 Woodhaven sewer service prior to this case?

22 MR. BALOUGH: Your Honor, I'm going to object to

1     this.  First of all, it's highly unusual to recalling  
2     a witness this many times.  This is not even a portion  
3     of the testimony that they're proposing to strike, at  
4     least in the formal portion they gave me.

5                 I don't understand -- this witness has been  
6     on the stand.  They had an opportunity to cross-  
7     examine her on these issues if they desired to.  I see  
8     no reason why we are now delving into our testimony.

9                 Like I said, this isn't even a portion,  
10    unless they now have additional portions they want to  
11    strike, that they're trying to wedge in through some  
12    inappropriate means here.

13                I don't know how many bites at the apple we  
14    can have, if I can now recall their witnesses when I  
15    feel like, oh, I slipped up on cross-examination,  
16    which is apparently what counsel's trying to do here.

17                This is highly unusual.  It's cross-examining  
18    over testimony that hasn't even been admitted yet.  
19    It's cross-examining for testimony that they're not  
20    objecting to because we're going to strike it and we  
21    want this witness to testify to it.

22                Plus this witness already, it's not in her

1 direct testimony. This is highly unusual. And I  
2 object to any further questioning along these lines.

3 MS. BUELL: And as I stated, Your Honor, I object  
4 to this line of questioning too. It's beyond the  
5 scope of Ms. Harden's testimony.

6 MS. GALIOTO: Your Honor had granted me leave to  
7 ask her questions along these lines. I think in large  
8 part these objections go to your ruling that you have  
9 already made in allowing me to ask some questions.

10 I don't think I've gone beyond what you have  
11 granted me, Your Honor. All I wanted to will test her  
12 with is if she knows what the rate was and if she  
13 knows whether or not Aqua's actually charging that  
14 rate.

15 It's -- I think she should know. If she  
16 doesn't, I think she should know what the rate was  
17 coming into this proceeding.

18 JUDGE ALBERS: I granted you some leeway to the  
19 extent that she knew.

20 MR. BALOUGH: If I may say, I don't understand  
21 what changed between yesterday when she was on the  
22 stand and today that we now have the fact that there

1     was some total surprise on counsel's part that this  
2     130 percent, she now needs to know whether this  
3     witness reviewed that testimony. What circumstances  
4     changed since yesterday?

5           JUDGE ALBERS: Let's not get hooked up over this.  
6     It's a small part of a big picture.

7           MR. BALOUGH: I understand, Your Honor. But I  
8     find it highly offensive that counsel is trying to use  
9     inappropriate methods to get evidence into the record.

10          JUDGE ALBERS: I can recognize what's appropriate  
11     and inappropriate. We can talk about that later.

12          MS. GALIOTO: Q. Ms. Harden, you indicated that  
13     you did not delve into the particular area in  
14     preparing for your testimony?

15           A. Yes.

16           Q. Did you consider what the previous rate was,  
17     though, when you prepared your testimony?

18           A. Previous to the current case or previous to  
19     the 2000 case?

20           Q. Previous to the current case.

21           A. Yes. Under the Company's present rates that  
22     I show in my schedule.

1           Q.     And you are aware that the rate that was on  
2     file prior to the current case was 130 percent of the  
3     water rate for commercial customers.  Is that correct?

4           A.     Yes.

5           Q.     Do you know whether the Company in fact  
6     charged the rate that was on file with the Commission?

7           A.     No.  I did not review the bills.

8           MS. GALIOTO:  Okay.  I have nothing further.

9                     Your Honor, I would like to the extent it's  
10    necessary -- I don't think it is, but I would like  
11    administrative notice of the Company's tariff, which  
12    IS Illinois Commerce Commission Number 48, Section 4,  
13    Original Sheet Number 2.  And that was approved by the  
14    Commission in Docket Number 97-0531.

15           JUDGE ALBERS:  What was that number again,  
16    please?

17           MS. GALIOTO:  Illinois Commerce Commission Number  
18    48, Section 4, Original Sheet Number 2.  And it was  
19    approved in Docket Number 97-0531.

20           JUDGE ALBERS:  Any objection?

21           MS. BUELL:  No objection.

22           MR. BALOUGH:  No objection, Your Honor.

1 JUDGE ALBERS: Take administrative notice of  
2 that.

3 Any follow-up for Ms. Harden?

4 MS. BUELL: Nothing from Staff, Your Honor.

5 MR. BALOUGH: No questions, Your Honor.

6 JUDGE ALBERS: All right. Thank you, Ms. Harden.  
7 (Witness excused.)

8 JUDGE ALBERS: Okay. If I recall correctly, I  
9 believe the plan now is to turn to your witnesses,  
10 Mr. Balough.

11 MR. BALOUGH: That's fine or Staff.

12 Well, I guess -- maybe we can go off the  
13 record just a second.

14 JUDGE ALBERS: Okay.  
15 (Whereupon there was then had  
16 an off-the-record discussion.)

17 MR. BALOUGH: Your Honor, I would call Jeffrey  
18 Hickey, please.

19 JUDGE ALBERS: Mr. Hickey, you recognize you're  
20 still under oath from yesterday?

21 MR. HICKEY: Yes.

22 JUDGE ALBERS: All right. Very good.

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JEFFREY HICKEY

called as a witness herein, having been previously  
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BALOUGH:

Q. Good morning, Mr. Hickey.

A. Good morning.

Q. Would you please state your full name.

A. Jeffrey Hickey.

Q. By whom are you employed, Mr. Hickey?

A. The Woodhaven Association.

Q. And what is your role there?

A. I am the general manager.

Q. Mr. Hickey, did you right or cause to be  
written and drafted testimony that was filed in this  
docket?

A. Yes, I did.

Q. And let me call your attention to testimony  
that was marked and filed on the e-Docket on May 5,  
2005, Exhibit WA 1.00. Is that your testimony?

A. Yes, it is.

Q. And along with that testimony were there

1 attached exhibits to that testimony that were numbered  
2 Exhibit WA 1.01 through WA 1.11?

3 A. Yes. That's correct.

4 Q. And were those exhibits either prepared by  
5 you or under your supervision?

6 A. Yes, they were.

7 Q. Okay. And in particular, I'd like to call  
8 your attention to Exhibit WA 1.04, please. Do you  
9 have that in front of you?

10 A. Yes, I do.

11 Q. Can you tell me what that exhibit is?

12 A. That is a copy of the recorded minutes of a  
13 meeting that took place at the Woodhaven board meeting  
14 on November 22nd, a presentation from Aqua Illinois to  
15 our board of directors.

16 MS. GALIOTO: Your Honor, I'm going to object.  
17 This is additional direct testimony it appears that  
18 we're going down.

19 MR. BALOUGH: Your Honor, there has been an  
20 objection as to foundation --

21 JUDGE ALBERS: We haven't heard the objections  
22 yesterday.

1           MR. BALOUGH: I'm sorry. Will I be able to: --

2           JUDGE ALBERS: You'll be able to respond to the

3           objections.

4           MR. BALOUGH: I be able to put this witness on

5           voir dire if I need to to ask him --

6           JUDGE ALBERS: We'll see what happens.

7           MR. BALOUGH: Q. Mr. Hickey, did you also file

8           what has been called your rebuttal testimony and it

9           was numbered Exhibit WA 2.0?

10          A. Yes.

11          Q. And attached to that were Exhibits WA 2.01

12          and 2.02?

13          A. Yes.

14          Q. And that was filed on e-Docket on July 7,

15          2005?

16          A. Yes.

17          Q. Mr. Hickey, if I were to ask you the

18          questions that appear in Exhibit WA 1.0 today, would

19          your answers be the same?

20          A. Yes, they would.

21          Q. And likewise, if I were to ask you the

22          questions that appear in your Exhibit WA 2.0, would

1     your answers be the same?

2           A.     Yes, they would.

3           MR. BALOUGH:   Your Honor, at this point I would  
4     offer Woodhaven Exhibit WA 1.0 along with Exhibits WA  
5     1.01 through WA 1.11 and Exhibit WA 2.0 and Exhibits  
6     WA 2.0    and 2.02.

7           MS. BUELL:   No objection from Staff, Your Honor.

8           JUDGE ALBERS:   Any objections from the Company?

9           MS. GALIOTO:   Yes, Your Honor.

10                  How would you like to proceed?

11           JUDGE ALBERS:   I think the simplest is to go  
12     through them one at a time.

13           MS. GALIOTO:   I'm sorry?

14           JUDGE ALBERS:   Probably be simplest just to go  
15     through them one at a time.

16           MS. GALIOTO:   Okay.

17                  Company objects to page 2, lines 34  
18     through 36, Mr. Hickey's statement with regard to  
19     changes that he speculates have taken place at the  
20     Company.   Object on the grounds of foundation as well  
21     as speculation, Your Honor.

22           JUDGE ALBERS:   Are you saying he wouldn't be in a

1 position to know?

2 MS. GALIOTO: Correct, Your Honor.

3 MR. BALOUGH: Your Honor, in his testimony  
4 Mr. Hickey testifies that he has been employed by the  
5 Woodhaven Association since 1990 and that his  
6 responsibilities include all the financial  
7 operations.

8 And included in his duties are overseeing the  
9 relationship with the Aqua Illinois water division.  
10 And certainly he can offer his opinion as to what  
11 changes he has seen from his opinion in Aqua over the  
12 last 10, 15 years.

13 MS. GALIOTO: Your Honor, Mr. Hickey is not an  
14 employee of the Company. He simply does not know what  
15 changes have actually taken place. Testimony with  
16 regard to what he has seen from the outside, that's  
17 not what this is.

18 He is stating an opinion as fact as to what  
19 has happened at the Company. He simply does not know  
20 that. He cannot be in a position to know that.

21 JUDGE ALBERS: Okay. What's your next objection?

22 MS. GALIOTO: Turning to page 5, lines 40 through

1     42, I object on the grounds of hearsay and foundation.

2           MR. BALOUGH: Your Honor, on line 40 --

3     Mr. Hickey, you have to recall, is the general manager  
4     of the Woodhaven Association. And he's testifying  
5     that they noticed immediate change in how Aqua America  
6     treated the Woodhaven customers.

7           It is not hearsay. It's his observation. He  
8     is an employee of the Woodhaven Association, certainly  
9     can make these comments.

10           And he can state the basis for which he makes  
11     those comments is that he was receiving calls from  
12     their customers. Certainly subject to cross-  
13     examination, but not for a motion to strike.

14           MS. GALIOTO: Your Honor, any calls from property  
15     owners complaining to the Company of service  
16     Mr. Hickey would not have been a party to.

17           To the extent any particular customer  
18     complained to him, that is hearsay. There are over  
19     6,000 customers in the water division and over 5,000  
20     in the sewer division.

21           Mr. Hickey simply cannot know what level of  
22     service each and every one of those customers was

1     experiencing. And he simply cannot know what level of  
2     complaints each and every one of those customers had  
3     with the company.

4             JUDGE ALBERS: Okay. Next objection?

5             MS. GALIOTO: Page 6, lines 5 through 8, starting  
6     at the end of line 5 beginning Mr. The complete  
7     sentence, again, I object as hearsay.

8             MR. BALOUGH: Your Honor, this and a lot of the  
9     objections concerning hearsay are totally  
10    inappropriately made.

11            The rule in Illinois is that it's an  
12    exception to the hearsay rule when a party makes a  
13    statement. Mr. Bunosky is an agent, an employ of  
14    Aqua. He certainly testified in this docket as one.

15            The rule is that a party's own statement  
16    regarding a material fact is admissible as an  
17    exception to the hearsay rule and it's competent  
18    evidence against that party.

19            And Your Honor, I think if you look at the  
20    case of Pedigree versus Puterman, 331 Ill Ap 3rd 633  
21    you'll find that that is what the Illinois rule is.

22            Also if you look at a statement made out of

1 court, this is, by a party to an action which tends to  
2 establish or disprove a material fact is admissible as  
3 an exception to hearsay.

4 And a statement made by the agents is an  
5 admission on part of a principal and may be introduced  
6 against the principal; and that is the holding in the  
7 case of Perocinski versus the McClear Corporation, 338  
8 Illinois Ap 58.

9 There are also cases that discuss -- so any  
10 -- all these objections that -- which are the basis of  
11 these pages of objections are based on hearsay and  
12 they're wrong.

13 It is not hearsay because they're made by  
14 Mr. Bunosky. Mr. Bunosky is an agent of the Company.  
15 The company is a party to this proceeding. And under  
16 the clear rules of the Illinois courts, a statement by  
17 a party is admissible against that party.

18 MS. GALIOTO: Your Honor, if I may respond to  
19 that.

20 MR. BALOUGH: If Your Honor needs the case, I have  
21 copies of the cases available.

22 MS. GALIOTO: Your Honor, it is black-letter law

1     that an out-of-court statement -- regardless of  
2     whether you're a party to the proceeding, an out-of-  
3     court statement that is used to prove the truth of  
4     what is contained within that statement is hearsay.

5             Mr. -- counsel for the association has not  
6     cited any exception to that rule.  It's black-letter  
7     law.  He has a couple cases.  I haven't looked at  
8     those.  There are going to be many, many cases, again,  
9     black-letter law that say that this is classic  
10    hearsay.

11            It doesn't matter whether you're a party to  
12    the case or not.  And I also, to the extent that he is  
13    claiming that this is an admission, it certainly does  
14    not constitute an admission.

15            Any statement that was made in 2003 was based  
16    on a different set of facts that have changed over  
17    time, and it certainly does not constitute an  
18    admission with regard to anything the facts that exist  
19    in 2005 at the time this case was filed.

20            MR. BALOUGH:  Your Honor --

21            JUDGE ALBERS:  Cut off response and reply.

22            MR. BALOUGH:  Well, I just want to -- she's saying

1     it's not black-letter law. But if you read Cleary and  
2     Graham's Handbook of Illinois Evidence, which is the  
3     recognized -- it's actually blue now -- black book on  
4     evidence in his Chapter 801 -- I'm sorry -- 802-1 he  
5     specifically says, Relevant admissions of a party  
6     whether consisting of a statement or conduct are  
7     admissible when offered by the deponent as an  
8     exception to the hearsay rule. Lack of opportunity to  
9     cross-examine is deprived of significance by the  
10    incongruity of a party objecting to his own statement  
11    on the grounds that he was not subject to cross-  
12    examination by himself at the time. In the nature of  
13    things, a statement is usually damaging to the party  
14    against whom it is offered or else it would be not  
15    offered. However, the case law laid down no  
16    requirement that the statement be against interest  
17    either when made or when offered in the theory of  
18    exceptions not based thereon.

19               Your Honor, counsel admitted that she hasn't  
20    read the law and she hasn't read the cases. I have  
21    the cases. I have the law. It is an exception to the  
22    hearsay rule.

1 JUDGE ALBERS: Okay. Next objection?

2 MS. GALIOTO: On page 6 to page 7, lines 45 to  
3 line 1 where Mr. Hickey discusses alleged requests  
4 that he has made, once again, hearsay as well as  
5 foundation. He has not provided anything that  
6 corroborates his statements.

7 JUDGE ALBERS: Beginning?

8 MS. GALIOTO: Beginning with the word at the end  
9 of 45.

10 JUDGE ALBERS: Okay.

11 MS. GALIOTO: He is allegeding statements of his  
12 own out of the court to prove the truth of what he  
13 says he said in those statements. And again, that's  
14 hearsay.

15 We were not present at the time any such  
16 alleged statements were made to know exactly what was  
17 said, what requests were made. We cannot go back in  
18 time and investigate that matter to determine whether  
19 this is accurate and whether it actually proves the  
20 truth of what he is alleging.

21 MR. BALOUGH: Your Honor, that is the most  
22 disturbed version of hearsay I've ever heard that a

1 person who makes a statement who is subject to cross-  
2 examination in court his own statement and then  
3 remakes that statement in his testimony, that that's  
4 hearsay.

5 That is so beyond what hearsay is. It's a  
6 third party declaring in court and a statement made in  
7 court and they're not subject to cross-examination.

8 This witness is subject to  
9 cross-examination. He's right here. If she wants to  
10 find out when those requests were made, that's what  
11 cross-examination is for.

12 MS. GALIOTO: There are only certain instances  
13 and certain exceptions to the hearsay rule based on  
14 whether or not the witness is or is not available. It  
15 doesn't apply across the board.

16 JUDGE ALBERS: Next objection?

17 MS. GALIOTO: Page 7, lines 2 through 4, again  
18 object as hearsay and speculation. He is referencing  
19 a meeting with Mr. Bunosky and speculating as to what  
20 Mr. Bunosky's intent was.

21 He cannot know what Mr. Bunosky's or the  
22 Company's intent was. He cannot get inside their

1 minds.

2 MR. BALOUGH: Your Honor, this is clearly a  
3 statement by the witness. First of all, again, it's  
4 not hearsay. It's exception to the hearsay because it  
5 was a meeting with Mr. Bunosky, who is a party to this  
6 proceeding.

7 It is showing what Mr. Hickey's response was  
8 to his meeting with Mr. Bunosky. It doesn't -- it's  
9 not hearsay. And I've already made my arguments  
10 concerning hearsay.

11 MS. GALIOTO: He is only -- he can only be  
12 speculating as to the Company's intent at that time,  
13 Your Honor,

14 JUDGE ALBERS: I can tell the witness is  
15 speculating. I think I've heard enough of the  
16 objections now I feel compelled to say that I fear  
17 that you're losing site of the forest 'cause the trees  
18 are in the way.

19 Many of these objections -- so far I have in  
20 my notes denial of your objections so far. I need to  
21 emphasize that the bits and pieces that you're  
22 objecting to you can certainly cross Mr. Hickey on to

1     try to discredit his testimony or prove he doesn't  
2     know what he's talking about. That's certainly up to  
3     you.

4             But to sit here and pick apart every line  
5     that you find something objectionable to, we're going  
6     to be here a long time. But in denying these first  
7     five objections, I will give them their appropriate  
8     weight. I can tell when someone is perhaps, you know,  
9     speculating on his part.

10            I will grant that it's possible that  
11     Mr. Hickey is not intimately familiar with the inner  
12     workings and the minds of those -- I can tell that  
13     we're going to be here an awful long time if we sit  
14     here and pick apart every piece.

15            And so far the hearsay objections have been  
16     off the mark, quite frankly.

17            MS. GALIOTO: Your Honor, I thought it was  
18     important to get into the record what my objections  
19     were because I did find such speculative statements in  
20     other items that -- to be fairly prevalent.

21            I did not want to, you know, spend hours at  
22     this. I quite honestly didn't know how best to do

1     this and limit the time in which we had to address  
2     it.

3             Mr. Bunosky does respond and I think quite  
4     adequately to these types of allegations in his  
5     rebuttal testimony. And I did that under, you know,  
6     in case these things were not taken out of the  
7     record. We did want to respond within Mr. Bunosky's  
8     testimony so that that has been done.

9             Perhaps the useful thing to do would be to  
10    include each of these objections so that I have them  
11    on the record in case I need that for purposes later.  
12    I do feel fairly comfortable that we have responded to  
13    the extent that we needed to in addressing these  
14    things.

15            JUDGE ALBERS: That's fine. I mean, if you want  
16    to note the objections for the record, that's fine.

17            MS. GALIOTO: Okay.

18            JUDGE ALBERS: But I just -- you know, I don't  
19    want you to think that -- well, I'll just leave it  
20    that. We need to make sure we can try to conclude in  
21    three days here. Otherwise --

22            MS. GALIOTO: I agree. So would you suggest that

1 I put these objections in as an exhibit in the form  
2 that they were provided to counsel and yourself?

3 JUDGE ALBERS: Well, if you feel compelled that  
4 strongly by each individual sentence, I'm sure  
5 Mr. Balough is going to want to respond to them  
6 individually as well.

7 So we'll have to go ahead and take them  
8 individually. I would simply suggest that when you're  
9 objecting to instances where the witness himself is  
10 making a statement, you consider that you could ask  
11 him that on the stand as opposed to objecting to that  
12 in his testimony.

13 MS. GALIOTO: Well, you know, I think from what  
14 Your Honor was saying and I think what I was trying to  
15 convey to you is instead of us spending, you know,  
16 hours going through each one of these and assessing  
17 them individually, from what you're saying, it's sort  
18 of apparent that for the most part you were going to  
19 overrule the objections.

20 JUDGE ALBERS: I have not honestly given anything  
21 beyond the first five even a glance. So I don't even  
22 know what's to come, both the first five, if the rest

1 of them are like the first five --

2 MS. GALIOTO: They're not all -- I mean, they're  
3 all different parts of his testimony, so.

4 JUDGE ALBERS: Okay. If you're going to object to  
5 things like, you know, this witness said X outside of  
6 court, you want to object to that as opposed to asking  
7 him on the stand, that's fine. You can expect denials  
8 to your objection. So proceed at your own risk.

9 MS. GALIOTO: I think what I was trying to suggest  
10 is that I would like my objections noted for the  
11 record. But we would --

12 JUDGE ALBERS: If I want to make the objection,  
13 I'm sure counsel for the Intervenor is going to want  
14 to respond to them and he should have the opportunity  
15 to do so.

16 I don't know what the remainder of your  
17 objections are 'cause I haven't looked at them. As  
18 you make those, I'll look at the testimony at the same  
19 time and make a decision after hearing both you give  
20 your response and reply.

21 MS. GALIOTO: Okay. Well, given your ruling on  
22 some of these, it would be necessary for me to go

1 through and identify which ones are similar to be able  
2 to say that we've already addressed those issues and  
3 it's the same objection and the same response. I  
4 would need time to go through and identify which ones  
5 those are.

6 JUDGE ALBERS: We can do that now on the record or  
7 we can recess if I want to do it privately. That's up  
8 to you.

9 MS. GALIOTO: Let's do this. I will -- Your  
10 Honor, given your statements, I will withdraw my  
11 objections because I do believe that we have  
12 adequately responded to this in testimony.

13 I obviously do have some serious concerns  
14 with some speculation and things of other natures that  
15 is contained therein. But I think that for the most  
16 part we did identify where he is speculating within  
17 Mr. Bunosky's rebuttal testimonies.

18 JUDGE ALBERS: Don't get me wrong. Feel free to  
19 take the opportunity to cross him and point out where  
20 you think he's speculating. I don't want to  
21 discourage you from trying to impeach the credibility  
22 of this witness. That's certainly your right and your

1 obligation to your client.

2 If we're going to sit here and go through the  
3 particular objections we've heard so far, I can tell  
4 you what the ruling most likely will be based on what  
5 I've heard so far.

6 MS. GALIOTO: Okay. That's fine. I'm going to  
7 withdraw my objections.

8 JUDGE ALBERS: Okay. I don't believe Staff has  
9 any cross.

10 MS. BUELL: I'm sorry, Your Honor. Yes, that's  
11 correct. Staff has no cross for this witness.

12 MS. GALIOTO: I do not have cross for him, Your  
13 Honor.

14 JUDGE ALBERS: Okay. I don't think I have any  
15 cross either.

16 Thank you, Mr. Hickey.

17 (Witness excused.)

18 MS. BUELL: Your Honor, I can't recall, did you  
19 admit all of those exhibits into the record? I might  
20 have missed that.

21 JUDGE ALBERS: I have not, no.

22 MR. BALOUGH: Your Honor, on behalf of the

1 Woodhaven Association, that is our only witness.

2 JUDGE ALBERS: I'm trying to think of any reason  
3 to hold off on admitting the exhibits at this point. I  
4 don't think there is.

5 MR. BALOUGH: I believe -- depending on -- I  
6 believe there may be something in Mr -- it would not  
7 be in his rebuttal but in his surrebuttal I think  
8 maybe of Mr. Bunosky, if I'm not mistaken. It may be  
9 Mr. Schreyer concerning Oak Run's witness.

10 MS. GALIOTO: I'm sorry. I don't follow where  
11 you're --

12 JUDGE ALBERS: Yeah. I'm not sure where you're  
13 going with that either.

14 MR. BALOUGH: Well, as to Woodhaven, remember we  
15 had objected to Mr. Bunosky's testimony in regards to  
16 our testimony got stricken.

17 JUDGE ALBERS: Right. But since it didn't get  
18 stricken at this point --

19 MR. BALOUGH: Right. But I believe -- and I'd  
20 have to go back through. Again, there may be  
21 something in the testimony on the Oak Run testimony.

22 JUDGE ALBERS: Keep it to Woodhaven right now.

1 keep it to Woodhaven and keep it simple.

2 MR. BALOUGH: For Woodhaven, there's no  
3 objection. We offer him. And Mr. Bunosky's rebuttal  
4 testimony there would be no objection.

5 JUDGE ALBERS: Okay.

6 MR. BALOUGH: Because he doesn't address anything  
7 concerning Oak Run.

8 JUDGE ALBERS: Okay. All right.

9 MR. BALOUGH: Are you following that?

10 MS. GALIOTO: Not really. I don't know how Oak  
11 Run is coming into Mr. Hickey's testimony.

12 JUDGE ALBERS: It's not.

13 We haven't admitted in Bunosky yet 'cause  
14 we're waiting to see what happened with the objections  
15 to the Woodhaven and Oak Run testimony. But at this  
16 point in time --

17 MR. BALOUGH: Why don't we just put the Oak Run  
18 witness on and then --

19 JUDGE ALBERS: Well, I think it's safe to admit  
20 the Woodhaven testimony.

21 So Woodhaven Exhibit WA 1.0, Attachments 1.1  
22 through 1.11 and WA Exhibit 2.0, Attachments 2.01 and

1       2.02 are admitted.

2                               (Whereupon Woodhaven  
3                               Exhibits WA 1.0, 1.1 through  
4                               1.11, 2.0, 2.01 and 2.02 were  
5                               admitted into evidence.)

6           JUDGE ALBERS:   Those are on e-Docket.   Correct?

7           MR. BALOUGH:    Yes, Your Honor.   You need those  
8           dates again that they were filed on e-Docket?

9           JUDGE ALBERS:    If you got them.

10          MR. BALOUGH:    For 1.0, 1.01 through 1.11, they  
11          were put on e-Docket on May 5th.   For 2.0 and 2.01 and  
12          2.02, they were filed on e-Docket on July 7th.

13          JUDGE ALBERS:    All right.   Thank you.

14                       And Mr. Davison, there he is.   All right.  
15          Mr. Davison, were you sworn in yesterday?

16          MR. DAVISON:    Yes.

17          JUDGE ALBERS:    You realize you're still under  
18          oath?

19          MR. DAVISON:    Yes.

20          JUDGE ALBERS:    Okay.   Thank you.

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MICHAEL DAVISON

called as a witness herein, having been previously  
sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BALOUGH:

Q. Would you please tell the court reporter your  
name.

A. Michael Davison, D-a-v-i-s-o-n.

Q. Mr. Davison, by whom are you employed?

A. The Oak Run Property Owner's Association.

Q. And what is your title at Oak Run?

A. General manager.

Q. Mr. Davison, do you have in front of you what  
has been marked for identification currently as ORPA  
1.0? Would that be your prefiled rebuttal testimony?

A. Yes, I do.

Q. And do you also have in front of you what has  
been prefiled marked for identification as Exhibits  
MD-1 through MD-4, which were attachments to that  
testimony?

A. Yes, I do.

Q. Mr. Davison, if I were to ask you the

1 questions today under oath that appear in your  
2 exhibit, your testimony, would your answers be the  
3 same?

4 A. Yes, they would.

5 MR. BALOUGH: And Your Honor, all these exhibits  
6 were filed on e-Docket on July 7th. And I would offer  
7 as ORPA 1.0 and the attached Exhibits MD-1 through  
8 MD-4.

9 JUDGE ALBERS: Any objection?

10 MS. BUELL: No objection from Staff, Your Honor.

11 MS. GALIOTO: I do have some objections here, Your  
12 Honor.

13 JUDGE ALBERS: Okay.

14 MS. GALIOTO: I want to observe.

15 JUDGE ALBERS: Go ahead.

16 MS. GALIOTO: Just let me -- I would object to  
17 page 6, lines 122 through 134. Mr. Davison is  
18 testifying to alleged statements of third parties  
19 during a board meeting. This is hearsay. He is also  
20 speculating with regard to what those third parties  
21 feel.

22 JUDGE ALBERS: What were the line numbers again,

1     please?

2             MS. GALIOTO:   122 through 134.

3             JUDGE ALBERS:   Thank you.

4                     Let me read that before you make any,

5     please.   Okay.

6                     Did you have any further statements with

7     regard to your motion?

8             MS. GALIOTO:   I'll let Mr. Balough --

9             JUDGE ALBERS:   I just wanted to get your full

10     objection before he got a chance to respond.   That's

11     all.

12                     Mr. Balough, your response?

13             MR. BALOUGH:   Your Honor, starting on line 122,

14     the first sentence is not hearsay.   It certainly based

15     on what he's seen at the meeting, state whether he

16     thought it was contentious or not.

17             JUDGE ALBERS:   Was that part of your motion, that

18     first sentence?

19             MS. GALIOTO:   Yes, it was.

20             JUDGE ALBERS:   All right.   Go on.

21             MR. BALOUGH:   Your Honor, as to the remainder, we

22     would agree that it be stricken and we will file an

1 amended revised exhibit on e-Docket, blacken this  
2 portion out.

3 JUDGE ALBERS: Okay. Well, I don't see any harm  
4 in that first sentence. That could be his  
5 observation. Other than that, I guess that takes care  
6 of that one.

7 MS. GALIOTO: Turning to page 9, lines 190 through  
8 196, object on the grounds of relevance and hearsay  
9 and in some instances double hearsay.

10 JUDGE ALBERS: 190 through 196?

11 MS. GALIOTO: Yes.

12 JUDGE ALBERS: Is that, According to the Wall  
13 Street Journal, is that where you start that or --

14 MS. GALIOTO: Yes. They're quoting the news  
15 article.

16 JUDGE ALBERS: Mr. Balough, your response?

17 MR. BALOUGH: Yes, Your Honor.

18 Your Honor, first of all, starting on line  
19 193 through 196, that is an admission of the party to  
20 this proceeding, the president of Aqua America. So  
21 that would not be a hearsay statement.

22 As to the Wall Street Journal article, we

1 believe that that would be part of a -- that that is  
2 also quoting Mr. Benedictus and therefore it can go in  
3 as an admission.

4 JUDGE ALBERS: That Exhibit MD-2 the actual  
5 article?

6 MR. BALOUGH: Yes.

7 JUDGE ALBERS: Is that part of your motion to  
8 strike, MD-2?

9 MS. GALIOTO: Yes, it is, Your Honor. The  
10 relevant part of that article is not in quotes from  
11 Mr. Benedictus.

12 In addition, these items reference  
13 information with regard to Aqua America, and their  
14 profits and revenues are not at issue in this case.

15 What is at issue is Aqua Illinois Woodhaven  
16 Divisions and Oak Run Divisions. So therefore, I  
17 object on the grounds of relevance with respect to  
18 this information.

19 JUDGE ALBERS: Did you mention relevance the first  
20 time?

21 MS. GALIOTO: Yes, I did.

22 JUDGE ALBERS: Okay. Thank you.

1           MR. BALOUGH: And Your Honor, just as to the  
2   relevance point, just one quick point. Certainly  
3   Ms. Harden and some others have testified since these  
4   companies are not publicly traded you have to refer to  
5   the parent company.

6           And she in her testimony made numerous  
7   references to Aqua America for its, concerning its  
8   ability and its rate of return.

9           MS. GALIOTO: Those comments were with regard to  
10   entirely different issues establishing our return on  
11   equity versus anything that this information would be  
12   utilized as an offer of proof for.

13          JUDGE ALBERS: I would agree with Ms. Galioto, so  
14   the motion is granted with regard to relevancy.

15          MS. BUELL: Your Honor, was that just for lines  
16   190 through 193 or was it for 190 through 196?

17          JUDGE ALBERS: 190 beginning with, According to  
18   the Wall Street Journal, through 196.

19          MS. BUELL: Okay. Thank you.

20          MS. GALIOTO: Then, Your Honor, I object page 10,  
21   lines 222 through 223 as well as MD-3. Again,  
22   citations to U.S. News and World Report August 2002

1       edition grounds of hearsay.

2           JUDGE ALBERS:   Did you say just hearsay?

3           MS. GALIOTO:    Yes.

4           MR. BALOUGH:    I have no further response than what  
5   I had previously.

6           MS. GALIOTO:    Your Honor, this is clearly citation  
7   to a third-party news reporter at the U.S. News and  
8   World Report company publication.

9           JUDGE ALBERS:   Is MD-3 just part of the article?

10          MS. GALIOTO:    Yes, MD-3 is the article.

11          JUDGE ALBERS:   But is it part of?

12          MS. GALIOTO:    Yes, it's part of.

13          JUDGE ALBERS:   You would agree with that,  
14   Mr. Balough?  It's not the complete article, just part  
15   of the article?

16          MR. BALOUGH:    Well, it is part of the article,  
17   yes, Your Honor.

18          JUDGE ALBERS:   Okay.

19          MR. BALOUGH:    It's a chart, which is part of the  
20   article.

21          JUDGE ALBERS:   Okay.  I don't think under the  
22   circumstances I'm inclined to agree with you again,

1 Ms. Galioto.

2 MS. GALIOTO: Then, Your Honor, on the same lines  
3 page 11, line 227, actually, 226 through 227

4 Mr. Davison testifies with regard to rates being three  
5 times the national average. That testimony is  
6 dependent on his U.S. News and World Report article  
7 that was just stricken.

8 JUDGE ALBERS: What lines are those again, please?

9 MS. GALIOTO: 226 through 227. And without MD-3  
10 in evidence, this lacks foundation.

11 JUDGE ALBERS: Mr. Balough?

12 MR. BALOUGH: Your Honor, whether that is his sole  
13 basis or not, I think that is subject to cross-  
14 examination. The fact that he says the rate is three  
15 times the national average is not dependent on that  
16 exhibit. She can ask him questions concerning that.  
17 He certainly can make that statement.

18 MS. GALIOTO: Your Honor, I believe he proffered  
19 the U.S. News and World report as his basis for that  
20 statement. It's part and parcel of a single-paragraph  
21 discussion. He has not set forth any other items to  
22 corroborate that testimony.

1 JUDGE ALBERS: Okay. I'll grant that one. 226  
2 beginning, It is difficult?  
3 MS. GALIOTO: Yes.  
4 JUDGE ALBERS: Okay.  
5 MS. GALIOTO: Again on page 11, lines 232 -- let  
6 me make sure I have the entire thing -- 232 through  
7 236. Again on the grounds of hearsay and relevance  
8 once again.  
9 JUDGE ALBERS: Response?  
10 MR. BALOUGH: No, Your Honor. I believe you've  
11 ruled previously.  
12 JUDGE ALBERS: That's fine. Stricken as well.  
13 MS. GALIOTO: And that's it, Your Honor.  
14 JUDGE ALBERS: Okay. With that, then, why don't  
15 we call what's left ORPA 1.0 Revised and --  
16 MR. BALOUGH: And I will file an amended copy on  
17 e-Docket of the third line blacked out.  
18 JUDGE ALBERS: Thank you.  
19 Are there any questions for Mr. Davison?  
20 MS. GALIOTO: Yes, I do, Your Honor.  
21 (Whereupon there was then had  
22 an off-the-record discussion.)

1 (Whereupon a short recess  
2 was taken.)

3 CROSS-EXAMINATION

4 BY MS. GALIOTO:

5 Q. Good morning, Mr. Davison.

6 A. Good morning.

7 Q. You testified that you are the general  
8 manager of the Oak Run Association?

9 A. Yes.

10 Q. Do you have any experience in the development  
11 of a utility revenue requirement?

12 A. No, I do not.

13 Q. Have you ever testified in a rate-case  
14 proceeding before?

15 A. No, I have not.

16 Q. Have you ever conducted a rate analysis?

17 A. No, I have not.

18 Q. You've relied largely on the Commission Staff  
19 to review and make appropriate recommendations with  
20 regard to Aqua's rate in this case. Correct?

21 A. Correct.

22 Q. Now, you state page 5 of your testimony that

1     -- let me see -- that the association supporting  
2     business and future development of the community will  
3     be adversely affected by the rate case within this  
4     proceeding. Do you see that?

5                 Lines 105 through 108.

6             A.     Yes.

7             Q.     Have you done an analysis of what the impact  
8     will be on the rate increase to the association to its  
9     monetary situation?

10            A.     No, not fully.

11            Q.     Have you done an analysis as to what this  
12     rate impact will be with regard to the residents of  
13     Oak Run?

14            A.     The percentage increase, but I'm not sure  
15     where you're going.

16            Q.     My question is, do you know what a rate  
17     increase, what impact that will have on any single  
18     customer's monetary budget?

19                    Do you know what their -- to clarify, do you  
20     know what their income is and what their expenses are  
21     and have you analyzed how this additional expense will  
22     impact their disposable income?

1           MR. BALOUGH: Your Honor, I'm going to object just  
2   from the point of view that that is a complex  
3   question. I think I counted four separate questions  
4   in there. Does he know what their income is? Does he  
5   know what their budget is?

6           JUDGE ALBERS: Okay.

7           MS. GALIOTO: I'll start over.

8           JUDGE ALBERS: Thank you.

9           MS. GALIOTO: Q. Do you know what the income is  
10 of each of the residents of Oak Run?

11          A. No.

12          Q. Do you know what their expenses are?

13          A. No.

14          Q. So you do not know what impact, whether this  
15 impact will -- strike that.

16                 You do not know whether the rate increase as  
17 a result of this proceeding will impair their ability  
18 to -- will significantly impair their disposable  
19 income?

20          A. No.

21          Q. Do you know -- have you done any analysis as  
22 to whether any individuals would decide not to come to

1 the community as a result of this rate increase?

2 A. Analysis, no.

3 Q. You do not know of any individuals who will  
4 not move to the community as a result of the rate  
5 increase?

6 JUDGE ALBERS: The rate increase is the one  
7 proposed or in reference to the reverse-osmosis plant?

8 MS. GALIOTO: The one proposed, Your Honor.

9 JUDGE ALBERS: Okay.

10 THE WITNESS: I have had phone calls of people who  
11 say they want to sell their property and move because  
12 they did not want to pay the availability rate and if  
13 their water rates continue to go up, they are planning  
14 on selling their property, yes, I've had those phone  
15 calls.

16 MS. GALIOTO: Q. Have you done an analysis as to  
17 what impact on any business -- strike that.

18 Do you know the operating income of any  
19 businesses within the community?

20 A. As I sit here today, no.

21 Q. Do you know the expenses any businesses  
22 experience?

1           A.     Other than our own, no.

2           Q.     Now, you mentioned you had conversations with  
3     a couple of residents. Can you tell me how many?

4           MR. BALOUGH: I'm sorry. A couple conversations  
5     with residents?

6           MS. GALIOTO: Q. With regard -- you just  
7     testified to some conversations with some residents.  
8     Do you recall that testimony?

9           A.     Yes.

10          Q.     How many conversations have you had?

11          A.     Since the rate increase was proposed, more  
12     than 20.

13          Q.     Okay.

14          A.     Phone calls.

15          Q.     Oak Run is within Knox County?

16          A.     Correct.

17          Q.     Do you know what the -- strike that.  
18                 You set forth in some of your exhibits some  
19     rates with regard to other utilities throughout the  
20     state of Illinois. Do you recall that?

21          A.     Yes.

22          Q.     Have you conducted any revenue analyses with

1      regard to any of those systems?

2            A.     No.

3            Q.     Have you assessed any similarities and  
4      dissimilarities between those systems and the Oak Run  
5      system in terms of how the system is operated?

6            A.     No.

7            Q.     On page 4 of your testimony, line 89 --  
8      actually, strike that.    I'm sorry.

9                    You testified on page 5 to what you perceived  
10     to be animosity felt by the Oak Run customers?

11           A.     Yes.

12           Q.     How many individuals have you perceived that  
13     from?

14           A.     More than a hundred.

15           MS. GALIOTO:    I have nothing further, Your Honor.

16           JUDGE ALBERS:    Staff?

17           MS. BUELL:    Nothing from Staff, Your Honor.

18                    CROSS-EXAMINATION

19                    BY JUDGE ALBERS:

20           Q.     Mr. Davison, just briefly, you object to the  
21     inclusion of the cost for the reverse-osmosis-plant  
22     study in rate base.    Correct?

1           A.     Correct.

2           Q.     Now, is that because you don't think the  
3     plant will ever be built or because you think the  
4     costs listed are inaccurate?

5           A.     Because I don't think the plant will be  
6     built.

7           Q.     Okay. That's just based on your -- just  
8     given your job at Oak Run, that's your understanding  
9     of either your clients' or your member's --

10          A.     Yes.

11          Q.     -- opinions?

12          A.     Yes.

13          Q.     Okay.

14          A.     And the demographics of the community.

15          Q.     Meaning?

16          A.     Meaning we have 2000 availability lots where  
17     people do not take water.

18          Q.     Oh, okay.

19          A.     As I stated in testimony, yes.

20                 JUDGE ALBERS: Okay. All right. Thank you.

21                 Did you have any redirect?

22                 MR. BALOUGH: No, Your Honor.

1 JUDGE ALBERS: Okay. Thank you, sir.

2 (Witness excused.)

3 JUDGE ALBERS: Anything further from the  
4 Intervenors?

5 MR. BALOUGH: No, Your Honor. I would ask just  
6 one thing, however.

7 I would want an opportunity -- I'm sure we'll  
8 be here past lunch -- over the lunch hour to at least  
9 take one final review of Mr. Bunosky's and  
10 Mr. Schreyer's testimony to make sure that the  
11 portions that were stricken from Mr. Davison's  
12 testimony, that there's not anything in their  
13 testimony that --

14 JUDGE ALBERS: Would flow through?

15 MR. BALOUGH: -- would flow through. I just want  
16 to be doubly sure on that.

17 JUDGE ALBERS: That's a good idea. Okay.

18 MR. BALOUGH: And I will prepare and file on  
19 e-Docket ORPA 1.0 Revised, which will reflect the  
20 portions that have been stricken.

21 JUDGE ALBERS: Okay. And with that, if there's  
22 no further objections, then ORPA Exhibit 1.0 Revised

1     and I believe Attachments MD-1 and MD-are the ones  
2     that remain. Is that correct?

3             MR. BALOUGH: Correct.

4             JUDGE ALBERS: Okay. Those are admitted.

5                     (ORPA Exhibits 1.0 Revised,  
6                     Attachments MD-1 and MD-4 were  
7                     admitted into evidence.)

8             JUDGE ALBERS: Anything further from the  
9     Intervenors?

10            MR. BALOUGH: No, Your Honor.

11            JUDGE ALBERS: Turn to the Staff.

12            MS. BUELL: Thank you, Your Honor.

13                    Staff calls Burma C. Jones to the stand.

14                    And Your Honor, before Ms. Jones takes the  
15     stand, I just wanted to mention that revised copies of  
16     her rebuttal testimony were provided yesterday to  
17     counsel for the parties and the court reporter. And I  
18     believe you got a copy as well. And actually,  
19     Ms. Jones just handed another copy to today's court  
20     reporter.

21            JUDGE ALBERS: Go ahead.

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BURMA JONES

called as a witness on behalf of the Illinois Commerce  
Commission Staff, having been previously duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BUELL:

Q. Ms. Jones, could you please state your full  
name and spell your last name for the record.

A. Burma C. Jones, J-o-n-e-s.

Q. Ms. Jones, by whom are you employed?

A. I'm employed by the Illinois Commerce  
Commission.

Q. And what is your position at the Illinois  
Commerce Commission?

A. I'm an accountant in the Financial Analysis  
Division.

Q. Ms. Jones, have you prepared written  
testimony for purposes of this proceeding?

A. Yes, I had.

JUDGE ALBERS: Before we go any further,  
Ms. Jones, you were sworn yesterday?

THE WITNESS: Yes.

1 JUDGE ALBERS: Okay.

2 MS. BUELL: Q. Do you have before you a document  
3 which has been marked for identification as ICC Staff  
4 Exhibit 2.0, which consists of a cover page, table of  
5 contents, 18 pages of narrative testimony, 20 pages of  
6 schedules 2.01 OR through 2.05 WW and is titled Direct  
7 Testimony of Burma C, Jones?

8 A. Yes, I do.

9 Q. And is this a true and correct copy of the  
10 direct testimony that you've prepared for this  
11 proceeding?

12 A. Yes, it is.

13 Q. Do you also have a document before you that  
14 has been marked for identification as ICC Staff  
15 Exhibit 7.0, which consists of a cover page, table of  
16 contents, 16 pages of narrative testimony, six pages  
17 of schedules 7.01 WS through 7.03 WS, three pages of  
18 attachments A through C and titled Rebuttal Testimony  
19 of Burma C. Jones?

20 A. Yes, I do.

21 Q. And is this a true and correct copy of the  
22 rebuttal testimony that you've prepared for this

1 proceeding?

2 A. Yes, it is.

3 Q. Now, Ms. Jones, do you have any corrections  
4 to make to your prepared direct or rebuttal testimony?

5 A. Yes, I do.

6 In my rebuttal testimony on page 15, the --  
7 in the last line of the table on page 15, the  
8 management dollars for Woodhaven Water should be  
9 \$148,920 instead of 148,795.

10 Q. Do you have any other corrections to make to  
11 your prepared direct or rebuttal testimony?

12 A. No, I do not.

13 Q. And have you provided the court reporter and  
14 the parties to this proceeding with a clean copy of  
15 your corrected rebuttal testimony?

16 A. Yes, I have.

17 Q. And you've designated this corrected  
18 testimony as what?

19 A. ICC Staff Exhibit 7.0C.

20 Q. Thank you.

21 Now, Ms. Jones, is the information contained  
22 in ICC Staff Exhibits 2.0 and 7.0C and the

1 accompanying schedules and attachments true and  
2 correct to the best of your knowledge?

3 A. Yes.

4 Q. And if I were to ask you the same questions  
5 today, would your responses be the same?

6 A. Yes, they would.

7 MS. BUELL: Your Honor, at this time I would ask  
8 for admission into evidence of Ms. Jones' prepared  
9 direct testimony marked as ICC Staff Exhibit 2.0,  
10 including its attached schedules, and Ms. Jones'  
11 prepared rebuttal testimony marked as ICC Staff  
12 Exhibit 7.0C, including its attached schedules and  
13 attachments.

14 And I note for the record that Ms. Jones'  
15 direct testimony was filed on the Commission's  
16 e-Docket system on May 5, 2005. And of course,  
17 Ms. Jones' corrected rebuttal testimony was handed to  
18 the court reporter yesterday.

19 JUDGE ALBERS: Could you please identify the  
20 schedules attached to each of the exhibits?

21 MS. BUELL: The schedules attached to Ms. Jones'  
22 direct testimony, as I indicated, consist of 20

1 pages. Schedule 2.01(OR) consists of two pages.

2 JUDGE ALBERS: Just as far as numbers to make sure  
3 that I have the right -- like, for example, let me ask  
4 you this. Is there a Schedule 2.01 through 2.03 or  
5 2.05 for OR?

6 Doesn't seem to be an exhibit for each of the  
7 divisions, and I want to make sure I know what's being  
8 offered.

9 Does that make sense or should I rephrase that?

10 MS. BUELL: So then, Your Honor, for Oak Run  
11 Division Ms. Jones has attached to her direct  
12 testimony Schedules 2.01, 2.02, 2.03, and 2.05.

13 For the Woodhaven Sewer Division, Ms. Jones has  
14 attached Schedule 2.01, 2.03, 2.04, and 2.05.

15 JUDGE ALBERS: Okay. Off the record for a  
16 minute.

17 (Whereupon there was then had  
18 an off-the-record discussion.)

19 MS. BUELL: In her rebuttal testimony, Your Honor,  
20 a list of all her exhibits is on page 2. Schedule  
21 7.01 for Woodhaven Sewer. 7.02 refers to all  
22 divisions. 7.03 refers to both Woodhaven Water and

1 Woodhaven Sewer.

2 JUDGE ALBERS: Okay. Is there any objection?

3 MS. GALIOTO: No objection.

4 MR. BALOUGH: No objection.

5 JUDGE ALBERS: Any cross?

6 MS. GALIOTO: Yes. I have a little bit, Your

7 Honor.

8 JUDGE ALBERS: Okay.

9 CROSS-EXAMINATION

10 BY MS. GALIOTO:

11 Q. Ms. Jones, with regard to the management

12 expense, have you -- you have not contested that the

13 management expense is unreasonable in its amount, have

14 you?

15 A. The amount that was in the filing?

16 Q. Yes, as opposed to the allocation method.

17 You have not -- you have not contested the amount

18 itself, have you?

19 A. Well, that was the purpose of doing that

20 chart, that graph was to show that I did believe the

21 amounts were large, yes.

22 JUDGE ALBERS: Which chart are you referring to?

1           THE WITNESS: In my rebuttal testimony.

2           JUDGE ALBERS: The one on page 15?

3           THE WITNESS: The one on page 10 of my corrected

4 rebuttal testimony.

5           JUDGE ALBERS: Thank you.

6           MS. GALIOTO: Q. Let me clarify the question

7 'Cause I don't think you quite understood. I'm

8 referencing the total management expense charge that

9 was allocated to every division in Illinois, that

10 total management expense number.

11          A. No.

12          Q. There was nothing within that number -- there

13 e was no expense within that number that you found to

14 be imprudent. Correct?

15          A. No.

16          Q. Thank you.

17                Ms. Jones, I am -- you issued data requests

18 in this case that were prefaced with BCJ. Is that

19 correct?

20          A. Yes.

21           MS. GALIOTO: Your Honor, may I approach the

22 witness?

1           MS. BUELL:  Objection, Your Honor.  I object to  
2   the introduction of any data request that Ms. Jones  
3   has issued.

4           JUDGE ALBERS:  Nobody's moved to admit anything  
5   yet.  I have to see where Ms. Galioto is going with it  
6   before --

7           MS. GALIOTO:  I'll just remind everyone I am -- at  
8   this time I'm going down the lines that you granted me  
9   leave to go down earlier today.

10          JUDGE ALBERS:  Go ahead.  You know, I want to see  
11   what you're going to do before I can entertain any  
12   objections.

13          MS. GALIOTO:  Okay.

14          Q.    I'm handing you what is marked as BCJ 4.05.  
15   Do you recognize that?

16          A.    Yes, I do.

17          Q.    Did you issue that data request to the  
18   company?

19          A.    Yes, I did.

20          Q.    And do you recognize that as the Company's  
21   response?

22          A.    Yes.

1           Q.    Now, you've reviewed this response when you  
2   received it.   Correct?

3           A.    Yes.

4           Q.    And you did not -- strike that.

5                    You issued that data request because you  
6   believed it was part of your -- it was within the  
7   scope of your review of this case to assess that  
8   information.   Correct?

9           A.    Yes.

10          Q.    And --

11           JUDGE ALBERS:   May I see that data request?

12          MS. GALIOTO:   Your Honor, I only had one copy.   I  
13   only brought one copy of everything.

14          MS. BUELL:   In fact, I don't have it in front of  
15   me either.   I'm looking for my copy of it.

16          MS. GALIOTO:   I'm sorry.   We had so many that I  
17   just couldn't bring more than one of each.

18          JUDGE ALBERS:   Let me look at it so I can follow  
19   the discussion.

20          MS. BUELL:   Which response are we looking at to  
21   4.05?

22          MS. GALIOTO:   I'm sorry?

1 MS. BUELL: Which response are we looking at to  
2 BCJ 4.05?

3 MS. GALIOTO: Just a moment. I'll clarify for  
4 you.

5 We are looking at a supplemental response  
6 provided on April 19, 2005.

7 Q. Ms. Jones, you would believe it to be your  
8 responsibility that if you identified any issues  
9 within the scope of your review, to testify with  
10 regard to those issues before the Commission.  
11 Correct?

12 A. Well, we tend to look at the more significant  
13 and larger issues first, and then if there's time, we  
14 try to get around to the others.

15 Q. If you review a particular item and you find  
16 it to be of concern and you have conducted the review,  
17 you would testify with regard to it. Correct?

18 A. If I felt it to be material, yes.

19 Q. Would you read the question and answer to  
20 Subpart D of your data request?

21 MS. BUELL: Objection, Your Honor. I don't  
22 believe it's appropriate for Ms. Jones to read an

1     answer prepared by the Company into the record.   It's  
2     not her response.

3           MS. GALIOTO:   Your Honor, this is her data  
4     request.

5           MS. BUELL:    She did not prepare the response.   She  
6     prepared the questions.

7           MS. GALIOTO:   Can I -- let me follow up before I  
8     ask her to --

9           JUDGE ALBERS:   Go ahead.

10          MS. GALIOTO:   Q.   Ms. Jones, do you have before  
11     you a copy of the Company's Schedule B-15?

12          A.     No, I do not.

13          MS. GALIOTO:   Your Honor, may I approach again?

14          MS. BUELL:    Are we referring to B-15 for any  
15     particular division?

16          MS. GALIOTO:   Oak Run.   Or I'm sorry.   Woodhaven  
17     Sewer.

18          MS. BUELL:    So then is it B-15?

19          MS. GALIOTO:   Yes.

20          MS. BUELL:    Consisting of four pages?

21          MS. GALIOTO:   Yes.

22          MS. BUELL:    Which page in particular?

1 MS. GALIOTO: I'm going to direct her to page 2  
2 first.

3 MS. BUELL: And you said Woodhaven Sewer.  
4 Correct?

5 MS. GALIOTO: Yes.

6 JUDGE ALBERS: Go ahead. Don't wait on me. This  
7 time.

8 MS. GALIOTO: Q. I'm handing to the witness a  
9 copy of B-15 for the Woodhaven Sewer Division. Does  
10 that schedule relate to a customer advance account?

11 A. That's what it says it relates to, yes.

12 Q. Okay. And does this schedule state that it  
13 is showing the balance for the years 2001 through  
14 2003?

15 A. Yes, it does.

16 Q. And what is the balance showing for each of  
17 those years?

18 A. The balance is the same for all three years,  
19 \$184,207.

20 Q. Okay. Ms. Jones, I would like to ask you to  
21 turn to page 1. And is this the same information with  
22 regard to different years?

1           A.     Yes.  It shows the same amount for the years  
2     2004, 2005.

3           Q.     Okay.  And what is the balance for those  
4     years for customer advances?

5           A.     \$184,207.

6           Q.     Okay.  Thank you.

7                     Ms. Jones, did you have any reason to dispute  
8     the accuracy of those numbers during your review?

9           A.     No, I did not.

10           MS. GALIOTO:  Your Honor, I'm going to want to  
11     approach one more time.

12           Q.     Schedule B-1, Woodhaven Sewer Division.  And  
13     Ms. Jones, have you seen this schedule before?

14           A.     Yes, I have.

15           Q.     Is it setting forth a rate-base summary for  
16     the Woodhaven Sewer Division?

17           A.     Yes.

18           Q.     Is there an amount identified as customer  
19     advances?

20           A.     Yes, there is.

21           Q.     And is it the same amount that was identified  
22     on the balance of Schedule B-15 for the Woodhaven

1 Sewer Division?

2 A. Yes.

3 Q. And what is that amount?

4 A. \$184,207.

5 Q. Does this Schedule B-15 show that the  
6 customer advances in that amount are deducted from the  
7 company's rate base?

8 A. Yes, it does.

9 Q. Okay. Thank you.

10 And did you have any reason to dispute the  
11 accuracy of that information during the course of your  
12 review?

13 A. No.

14 Q. Is it your opinion that the Company did  
15 deduct those customer advances from its rate-base  
16 amounts based on this information?

17 A. That's what it shows on the Schedule B-1.

18 Q. And Your Honor, I would then like to turn to  
19 the Data Request BCJ 4.05, Subpart D.

20 Ms. Jones, when you reviewed this document,  
21 did you have any reason to dispute the accuracy of the  
22 answer to Subpart D?

1           A.     No, I did not.

2           MS. GALIOTO:   At this time, Your Honor, I would  
3     like to proffer Subpart D into evidence by having  
4     either the witness read it or marking it as a cross  
5     exhibit.

6           MS. BUELL:   Objection, Your Honor.   There's no  
7     foundation laid for this evidence to be put into the  
8     record.   This response was not prepared by Ms. Jones  
9     or under her direction or supervision.   It was the  
10    Company's response to her DR response, and she should  
11    not be testifying on behalf of the Company.

12          MS. GALIOTO:   Your Honor, Ms. Jones prepared the  
13    data request.   She reviewed the response.   She did not  
14    find anything wrong with the response.

15                 Staff should be here to set forth information  
16    on all the issues to the extent it has reviewed them.  
17    She's just stated that she didn't find anything wrong  
18    with the response.   And I think it should be admitted.  
19    She did review it within the course of her  
20    responsibilities.

21          MS. BUELL:   Your Honor, the date on this data  
22    request is April 19th.   The Company had substantial

1 opportunity to put it into the record in this  
2 proceeding by including it with its own testimony.  
3 Ms. Jones should not testify on behalf of the Company.

4 MS. GALIOTO: Your Honor, this is what Staff moved  
5 to strike.

6 JUDGE ALBERS: I'm comfortable with Ms. Galioto's  
7 arguments and her request. Probably be most efficient  
8 to simply to read the relevant portions of that.

9 MS. GALIOTO: Certainly.

10 Q. Ms. Jones, could you read your Subpart D  
11 question and the answer thereto?

12 A. Referring to customer advances on Schedule  
13 B-15 for the Woodhaven Sewer Division, provide the  
14 following information.

15 Work papers that support the test year  
16 balance of customer advances. For each advance, the  
17 work papers should identify, one, the date recorded,  
18 two, the purpose or specific asset to which the  
19 advance supplies. And three, the amount, the total of  
20 which should equal the balance of customer advances on  
21 Schedule B-15 at 12/31/05.

22 The Company's supplemental answer to my

1 request for information is as follows. The Company  
2 entered into a customer advance contract with the  
3 Woodhaven Lake Association on 5/22/97 to install 3,485  
4 feet of PVC sewer main, 17 manholes, 860 l.f. of  
5 six-inch PVC forced main, a lift station, road repair,  
6 grading and seeding in Sections 9 and 14 of Woodhaven  
7 Lakes.

8 Support for the test year balance is as  
9 follows. 7/97, receipt from Woodhaven Lake  
10 Association, \$12,100. 10/98, receipt from Woodhaven  
11 Lake Association \$184,277. 1999, two refunds to lake  
12 association, a credit of \$12,170. 12/31/05 projected  
13 balance, \$184,207.

14 JUDGE ALBERS: On further reflection, it might be  
15 prudent to actually have that as a cross exhibit since  
16 we all didn't have a full document. So at our next  
17 break at the lunch break get a copy or two  
18 circulating.

19 MS. GALIOTO: Okay. And you want to mark that as  
20 Cross Exhibit?

21 JUDGE ALBERS: I think it's the first cross  
22 exhibit. So why don't we call it Aqua Cross Exhibit

1 1.

2 (Whereupon Aqua Cross  
3 Exhibit 1 was marked for  
4 identification.)

5 JUDGE ALBERS: And noting Staff's objections, Aqua  
6 Cross Exhibit 1 is admitted.

7 (Whereupon Aqua Cross  
8 Exhibit 1 was admitted into  
9 evidence.)

10 MS. BUELL: Thank you, Your Honor.

11 MS. GALIOTO: Q. Ms. Jones, how many data  
12 requests did you issue to the Company in this  
13 proceeding?

14 A. I don't know. I didn't keep track of the  
15 total.

16 Q. If I told you that you issued 15 sets  
17 consisting of several different questions and several  
18 different subparts each, for a total of -- just one  
19 moment, Your Honor. Strike that question for a  
20 moment.

21 If I told you that you issued 127 data  
22 requests including subparts within the course of this

1 proceeding, would you have -- would you believe that  
2 that would be the correct number subject to check?

3 A. Subject to check, the Company requested that  
4 we provide or we separate our DRs for each division  
5 even when the question was the same, so.

6 Q. With regard to questions that may have been  
7 the same, how many answers from the Company to your  
8 data requests were the same for each division?

9 A. I haven't tracked that. I don't know.

10 Q. If I told you -- if I told you seven, would  
11 that sound correct to you?

12 A. I have no idea.

13 Q. What is your idea of what the number of  
14 duplicate responses were?

15 A. I don't know. I've never given it any  
16 thought.

17 Q. You agree that when you ask the same  
18 question, the answer may be different for each  
19 division. Is that correct?

20 A. It may or it may not be. If I knew the  
21 answer, I wouldn't be asking the question.

22 Q. Okay. So sitting here today, you have no

1     idea of how many answers were the same?

2           A.     No.

3           Q.     And you have no reason to dispute that that

4     number may have been seven?

5           A.     I have no reason to dispute it or confirm it.

6           MS. BUELL:   Your Honor, I'm going to object to

7     this line of questioning now.  I think we've endured

8     it long enough.  I fail to see the relevance to

9     Ms. Jones' testimony.

10          MS. GALIOTO:   The relevance goes to rate-case

11     expense, Your Honor.  There are -- rate-case expense

12     is an issue in this proceeding.  We believe it is

13     relevant to show how many data requests each of these

14     Staff members did issue because it is one of the

15     driving factors for rate-case expense.

16          MS. BUELL:   Ms. Jones does not discuss rate-case

17     expense in her testimony.  Clearly beyond the scope of

18     her testimony.

19          MS. GALIOTO:   But she is one of the persons --

20          JUDGE ALBERS:   I see your point.  That's fine.

21          MS. GALIOTO:   Okay.  And I have nothing further

22     for this witness.

1 JUDGE ALBERS: Mr. Balough, do you have any  
2 questions?

3 CROSS-EXAMINATION

4 BY MR. BALOUGH:

5 Q. Ms. Jones, turning to your page 15 of what has  
6 been admitted as ICC Staff Exhibit 7.0C concerning the  
7 \$238,669 to management costs.

8 A. Yes.

9 Q. Did you conduct a prudency analysis on that  
10 total amount?

11 A. No, I did not.

12 Q. Was that part of your responsibilities, to  
13 conduct a prudency analysis of that total amount?

14 A. No, it was not.

15 Q. So you're not testifying here today that that  
16 is necessarily a correct amount?

17 A. Correct in what sense?

18 Q. Your testimony goes to how that dollar figure  
19 should be allocated, not whether the dollar figure  
20 itself was accurate?

21 A. Yes. That's true.

22 MR. BALOUGH: Thank you. I have no other

1 questions.

2 JUDGE ALBERS: I have a few questions, Ms. Jones.

3 CROSS-EXAMINATION

4 BY JUDGE ALBERS:

5 Q. With regard to Oak Run, Aqua wants to build  
6 reverse-osmosis plant before its next rate case but  
7 has indicated it will only do so if the members of  
8 that community vote to accept the cost of the plant.

9 You suggest that those costs be recorded in  
10 Account 183 at this time. Correct?

11 A. Yes.

12 Q. Now, if they're recorded in Account 183,  
13 would such costs be included in rate base in this  
14 proceeding?

15 A. No, they would not.

16 Q. Okay. And if the reverse-osmosis plant is  
17 never built, you suggest that those costs then be  
18 moved to Account 426, miscellaneous nonutility  
19 expenses. Correct?

20 A. It will be moved to some miscellaneous-  
21 expense account, but not until the Company indicates  
22 that it has abandoned the project.

1 Q. Right.

2 But once it becomes clear that that's the  
3 intent whenever that may be, you're suggesting that  
4 those expenses be moved to Account 426 or as you just  
5 said some other miscellaneous expense account?

6 A. Yes.

7 Q. But the rest of my question, though, is if  
8 it's recorded in Account 426 or any other account you  
9 deem appropriate, hypothetically here, just  
10 hypothetically here, would such costs ever be included  
11 in rate base then?

12 A. No, not if the project were abandoned.

13 Q. Okay. I just wanted to be clear on that.  
14 That's fine. Thank you. I don't have anything else.

15 Any redirect?

16 MS. BUELL: I just have a couple questions, Your  
17 Honor.

18 JUDGE ALBERS: Okay.

19 REDIRECT EXAMINATION

20 BY MS. BUELL:

21 Q. Ms. Jones, counsel for Aqua asked you  
22 questions about how many data requests you sent to the

1     Company in this proceeding.   Could you explain to us  
2     why you sent out the number of data requests that you  
3     did?

4           A.     The Company filed these rate proceedings at  
5     the end of December using 2005 projected test year.  
6     Much of the information in the filing was 2004  
7     information, but the filing had been prepared earlier  
8     in 2004.

9                   And we felt the need to have more updated  
10    information than what was provided in the filing for  
11    the year 2004.

12           Q.     And do you recall the Administrative Law  
13    Judge asking you about the reverse-osmosis project and  
14    what accounts should be used?

15                   If the Commission disagrees that the  
16    construction of the reverse-osmosis plant will take  
17    place in 2007, is it appropriate to amortize the cost  
18    of the pilot study and engineering plans over ten  
19    years to Miscellaneous Expense Account 675?

20           A.     No.   It's not appropriate to move it out of  
21    that account until either the project goes forward or  
22    the Company abandons the project.

1 MS. GALIOTO: Your Honor, I'd object to that. I  
2 believe that goes beyond the scope of your questions.  
3 She's now responding to the Company's position and its  
4 testimony versus complaining what her own is.

5 JUDGE ALBERS: I agree.

6 MS. BUELL: I have nothing further, Your Honor.

7 JUDGE ALBERS: Your objection is sustained.

8 Nothing further, you said?

9 MS. BUELL: No.

10 JUDGE ALBERS: Any recross?

11 MS. GALIOTO: No.

12 JUDGE ALBERS: Thank you, Ms. Jones.

13 (Witness excused.)

14 JUDGE ALBERS: Hearing no other objection, Staff  
15 Exhibits 2 with Schedule 2.01 through 2.03 and 2.05  
16 OR, Schedule 2.01 and 2.05 WW, Schedule 2.01, 2.03,  
17 2.04, and 2.05 WS are admitted.

18 And Staff Exhibit 7.0C with Schedule 7.01 WS,  
19 Schedule 7.02 and Schedule 7.03 WW and WS as well as  
20 attached Exhibits A, B, and C are admitted.

21 (Whereupon Staff Exhibits 2.0,  
22 2.01, 2.02, 2.03, 2.05 OR,

1 Schedules 2.01 and 2.05 WW,  
2 2.01, 2.03, 2.04, 2.05 WS,  
3 Exhibit 7.0C, Schedules 7.01  
4 WS, 7.02, 7.03 WW and WS,  
5 Exhibits A, B, C were admitted  
6 into evidence.)

7 MS. BUELL: Thank you, Your Honor.

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1                                   AFTERNOON SESSION

2               JUDGE ALBERS:   We will resume with Staff

3   witnesses.

4   Ms. Buell.

5               MS. BUELL:   Yes.   Thank you, Your Honor.

6                       Staff calls Bonita A. Pearce to the stand.

7                                   BONITA PEARCE

8   called as a witness on behalf of the Illinois Commerce

9   Commission Staff, having been previously duly sworn,

10   was examined and testified as follows:

11                                   DIRECT EXAMINATION

12   BY MS. BUELL:

13         Q.    Good afternoon, Ms. Pearce.

14                       Would you please state your full name and

15   spell your last name for the record.

16         A.    Bonita A. Pearce, P-e-a-r-c-e.

17               JUDGE ALBERS:   Ms. Pearce, you were sworn in

18   yesterday.   Correct?

19               THE WITNESS:   That's correct.

20               JUDGE ALBERS:   Thank you.

21               MS. BUELL:   Q.   Ms. Pearce, by whom are you

22   employed?

1           A.     The Illinois Commerce Commission.

2           Q.     And what is your position at the Illinois  
3 Commerce Commission?

4           A.     I'm an accountant in the Financial Analysis  
5 Division.

6           Q.     And have you prepared written testimony for  
7 purposes of this proceeding?

8           A.     Yes.

9           Q.     Do you have before you a document which has  
10 been marked for identification as ICC Staff Exhibit  
11 1.0, which consists of a cover page, table of  
12 contents, 26 pages of narrative testimony, 36 pages of  
13 Attachments A through Q, 36 pages of schedules.

14                   And those schedules are for Oak Run,  
15 Schedules 1.01 through 1.10; for Woodhaven Water,  
16 Schedules 1.01 through 1.08 and Schedule 1.10; and for  
17 Woodhaven Sewer, Schedules 1.01 through 1.08 and  
18 Schedule 1.10. And it's titled Direct Testimony of  
19 Bonita A. Pearce?

20           A.     Yes.

21           Q.     And is this a true and correct copy of the  
22 direct testimony that you prepared for this

1 proceeding?

2 A. Yes, it is.

3 Q. Do you also have before you documents which  
4 have been marked for identification as ICC Staff  
5 Exhibit 6.0, which consists of a cover page, table of  
6 contents, 29 pages of narrative testimony, 46 pages of  
7 schedules, which include for Oak Run, Schedules 6.01  
8 through 6.09; for Woodhaven Water, Schedules 6.01  
9 through 6.10; and for Woodhaven Sewer, Schedule 6.01  
10 through 6.10 and are titled Redacted and Unredacted  
11 Rebuttal Testimony of Benita A. Pearce?

12 A. Yes.

13 Q. Are these true and correct copies of the  
14 rebuttal testimony that you've prepared for this  
15 proceeding?

16 A. Yes.

17 Q. Do you have any corrections to make to your  
18 prepared direct or rebuttal testimony?

19 A. No.

20 Q. And is the information contained in ICC Staff  
21 Exhibits 1.0 and 6.0 and the accompanying schedules  
22 and attachments true and correct to the best of your

1 knowledge?

2 A. Yes.

3 Q. And if I were to ask you the same questions  
4 today, Ms. Pearce, would your responses be the same?

5 A. Yes.

6 MS. BUELL: Your Honor, at this time I ask for  
7 admission into evidence of Ms. Pearce's prepared  
8 direct testimony marked as ICC Staff Exhibit 1.0  
9 including the attached schedules and attachments and  
10 Ms. Pearce's prepared redacted and unredacted rebuttal  
11 testimony marked as ICC Staff Exhibit 6.0, including  
12 the attached schedules.

13 JUDGE ALBERS: I have a question about one of  
14 those. What exactly is confidential about the  
15 material marked as confidential in the rebuttal  
16 testimony?

17 MS. GALIOTO: Your Honor, I believe that was an  
18 error by my office. The first time that we sent out  
19 all of the rate-case-expense invoices, our paralegal  
20 marked those confidential and I didn't realize it  
21 until much closer to now.

22 And when we submitted Mr. Schreyer's

1 surrebuttal testimony, we've removed those  
2 confidential designations. So I don't think it's  
3 necessary for that to be marked confidential, that  
4 portion of Ms. Pearce's testimony.

5 JUDGE ALBERS: Okay. So it's all -- everything  
6 can be public?

7 MS. GALIOTO: Yes. We do not need to go into  
8 closed session.

9 MS. BUELL: And Your Honor, the reason we did it  
10 that way was to honor Aqua's confidentiality claim for  
11 that information.

12 But since that's no longer the case, then I  
13 would only move for admission into the record of the  
14 unredacted rebuttal testimony of Benita A. Pearce.

15 MS. GALIOTO: That's fine.

16 JUDGE ALBERS: Okay. And you said Schedules 6.01  
17 through 6.10?

18 MS. BUELL: Correct.

19 JUDGE ALBERS: For both WW and WS?

20 MS. BUELL: That's correct.

21 JUDGE ALBERS: Okay.

22 MS. BUELL: 10 does not apply to 1.0.

1 JUDGE ALBERS: Okay. Any objections?

2 MS. GALIOTO: No objection.

3 MR. BALOUGH: No objection.

4 JUDGE ALBERS: Okay. Any cross for Ms. Pearce?

5 MS. GALIOTO: Yes, I do have some.

6 CROSS-EXAMINATION

7 BY MS. GALIOTO:

8 Q. Ms. Pearce, you state on page 6 of your  
9 testimony -- and I'm sorry. I didn't mark down  
10 whether it was your direct or rebuttal. Let me just  
11 check here. It's your direct. Page 24 of your  
12 direct.

13 I'm sorry. That's not -- just give me one  
14 moment.

15 Page 24 of your rebuttal testimony, Staff  
16 Exhibit 6.0, if I could direct your attention to lines  
17 497 to 499, you testify that rate-case expense should  
18 be recovered over the period of time that the subject  
19 tariffs are reasonably anticipated to be in effect.  
20 Correct?

21 A. Correct.

22 Q. And you have proposed a five-year recovery

1 period for Woodhaven Water and a seven-year period for  
2 Woodhaven Sewer. Correct?

3 A. Five years for Woodhaven Water, seven years  
4 for Woodhaven Sewer, that is correct.

5 Q. Okay. So is it your opinion that it would be  
6 reasonable for the Company to file a case for  
7 Woodhaven Water in five years and Woodhaven Sewer in  
8 seven years?

9 A. Those numbers were estimates that I derived  
10 based on historic filing experience of the Company.

11 Q. But given that you are proposing those number  
12 of years as the time that the rate-case expense should  
13 be recovered because that's when the Company would be  
14 reasonably likely to come back in, based on that  
15 testimony, is it your opinion that it would be  
16 reasonable for the Company to file within those years?

17 A. Based on the evidence that I've seen on their  
18 prior filing experience, those would be reasonable  
19 periods of time.

20 Q. Okay. So it would be reasonable for the  
21 Company to file Woodhaven Water in 2010 and Woodhaven  
22 Sewer in 2012?

1           A.     It might be.

2           Q.     Is it your opinion that it would be, that  
3     that would be reasonable?   Because if it's not  
4     reasonable for them to file in those years, then your  
5     testimony as to the amortization periods --

6           A.     My testimony was based on the period of time  
7     that I think it would be reasonable for the rates to  
8     be in effect.   And I based that on the experience that  
9     I've seen with the Company's recent filings.

10          Q.     But you testified that it would be reasonable  
11     for them to be in effect for that number of years.  
12     And that means at the end of that time, a new rate  
13     case would be filed.   It would be reasonable for that  
14     to take place at the end of that period of time?

15          A.     Yes.

16          Q.     Okay.   Thank you.

17                     So based on that -- or strike that.

18                     Now, you have been using the Company's past  
19     behavior as an indicator of when they're going to file  
20     their future rate cases?

21          A.     I've said it might be one indication.

22          Q.     Okay.   C in essence you're trying to predict

1 future action. Correct?

2 A. I'm merely trying to review what may happen  
3 based on past experience, and that is unusual one  
4 predictor of what could happen.

5 Q. There are other predictors?

6 A. There could be.

7 Q. When you say that the rate-case expense  
8 should be recovered over the period of time that they  
9 are reasonably anticipated to be in effect, you are  
10 making a judgment as to the reasonably anticipated  
11 period that they would be in effect?

12 A. Well, that statement I think is just an  
13 indication of what would be sound rate-making theory  
14 that you would want to amortize -- ideally you would  
15 want to amortize your rate-case expense over the  
16 length of time that the tariffs would be in effect.

17 Q. So you have set forth an opinion as to what  
18 period of time that would be. Correct?

19 A. What period of time I think would be  
20 reasonable.

21 Q. What period of time that these rates are  
22 likely to be in effect?

1           A.     Yes.

2           Q.     You have set forth an opinion on that?

3           A.     Based on my experience of the Company's past  
4     filings.

5           Q.     But you have set forth that opinion?

6           A.     Yes.

7           Q.     Okay.  And so you looked at one indicator  
8     which was past behavior.  Correct?

9           A.     Correct.

10          Q.     Okay.  You would agree that when the Company  
11     is going to file again, that's something that's going  
12     to happen in the future?

13          A.     Yes.

14          Q.     So by looking at past behavior, you are  
15     trying to anticipate what that future action is going  
16     to be?

17          A.     I'm trying to draw conclusions about what  
18     would be reasonable because none of us knows what's  
19     going to happen in the future.

20          Q.     That's true.

21                     But you have testified to a period of time  
22     that these rates are reasonably anticipated to be in

1 effect. And to reach that conclusion, you need to  
2 have an opinion as to when the next rate case is going  
3 to be filed. Correct?

4 A. Yes.

5 Q. Okay. Now, did you -- you didn't identify  
6 any other indicator within your analysis other than  
7 historical action, did you?

8 A. That was the basis for those time periods  
9 that I utilized, but I considered the rationale of the  
10 Company for their time periods as well.

11 For instance, on the Oak Run I considered the  
12 fact that they indicated the reverse-osmosis-treatment  
13 plant would seem to be one of the primary reasons that  
14 they would anticipate coming back in a shorter period  
15 of time than what I utilized.

16 Q. Okay. You did not set forth in your  
17 testimony as the basis for your proposed number of  
18 years any basis other than the historical spread  
19 between this case and the last case for each division?

20 A. I believe I did in my direct testimony, page  
21 16.

22 Q. Here on page 16 of your direct testimony do

1     you identify any basis other than the historical  
2     period between this and the prior rate case?

3           A.     Beginning on line 321 I discuss alternate  
4     amortization period for Oak Run Division wherein I  
5     described the methods used by the Company for a three-  
6     year amortization period that they have proposed.  And  
7     I continue this discussion on through page 18.

8                     And specifically, on line 374 I indicate that  
9     I believe the decision as to whether the reverse-  
10    osmosis treatment plant will be installed depends on  
11    the willingness of the Oak Run customers to pay for  
12    it.

13                    Based on response to one of my DRs, the  
14    Company responded that they don't yet know whether the  
15    Oak Run ratepayers will accept the cost to construct  
16    the plant if.  And therefore it appeared that if they  
17    didn't prove that, the plant would not be constructed,  
18    there might not be a need then to come in for a rate  
19    case in three years.

20           Q.     You agree that there's always the potential  
21    that something will trigger a rate-case filing earlier  
22    than the five- and seven-year periods that you have

1 recommended?

2 A. There could.

3 Q. And would those types of items include large  
4 capital investments, perhaps like the reverse-osmosis  
5 plant?

6 A. They might. I think it would have to be  
7 considered in the context of everything that was going  
8 on.

9 Q. It would have to be considered in the context  
10 of the Company's expenses?

11 A. Yes.

12 Q. And the current level of their revenues?

13 A. Yes.

14 Q. And that's something that's different with  
15 respect to every operating division. Correct?

16 A. To some degree, yes.

17 Q. Okay. You can have a large capital  
18 investment such as an investment to comply with  
19 Environmental Protection Agency standard in one  
20 division and not in the others?

21 A. I believe so.

22 Q. And is it your understanding that the

1 Commission also has the authority to call a rate case  
2 for a division of the Company?

3 A. Yes. I believe they can.

4 Q. And the ICC would have the opportunity to do  
5 that if they believed that the operating division was  
6 recovering too much money?

7 A. I can't really speak to the specifics.

8 Q. Would you agree that different factors would  
9 be relevant to whether Woodhaven is over-recovering as  
10 opposed to whether Vermilion is over-recovering?

11 A. Yes.

12 Q. And in the same sense, different factors  
13 would be relevant to determining whether either of  
14 those two divisions are under-recovering?

15 A. Yes.

16 Q. Now, you acknowledge that the events in the  
17 next five years are not likely to replicate exactly  
18 the events of the last five?

19 A. They may or may not replicate. I can't say.

20 Q. Do you think it's reasonable practice to  
21 capture capital investments, ongoing capital  
22 investments that are incurred in such things as

1 maintenance costs and inflation on a periodic basis  
2 through rate filings?

3 A. I'm sorry. Could you --

4 Q. Do you think it is reasonable practice to  
5 rescover regularly reoccurring capital investments and  
6 inflation in periodic rate filings?

7 A. I think that the Company has to make a  
8 decision on whether to come in for a rate filing based  
9 on many factors that are going on. Some elements,  
10 areas of expense may increase. Others may decline.  
11 Those might be factors that would cause the Company to  
12 decide it needed to file.

13 Q. And the Company needs to decide that on a  
14 specific operating division basis. Correct?

15 A. I think there could be other factors that  
16 would be involved.

17 Q. Okay. Was the bad-debt expense for Oak  
18 Run an issue in Vermilion?

19 Are you familiar -- let me start that.

20 Are you familiar with the Vermilion rate  
21 case?

22 A. Somewhat. I didn't testify in it, so I don't

1     feel like I could speak to specific issues.

2           Q.     Do you know whether Oak Run's bad-debt

3     expense was an issue in that case?

4           JUDGE ALBERS:   Did you say Oak Run's --

5           MS. GALIOTO:   Yes.

6           JUDGE ALBERS:   Oak Run's bad-debt expense was an

7     issue in the Vermilion rate case?

8           MS. GALIOTO:   Yes.

9           JUDGE ALBERS:   All right.

10          THE WITNESS:   I'm not aware of it.

11          MS. GALIOTO:   Q.   In your opinion it shouldn't

12     have been?

13          MS. BUELL:   Oh, Your Honor, I object to this.

14     This is completely irrelevant to the proceeding at

15     hand.   Bad-debt expense of the Vermilion docket

16     doesn't have anything to do with what Ms. Pearce is

17     testifying to.

18          MS. GALIOTO:   It is not completely irrelevant,

19     Your Honor.   The witness has testified that if rate

20     cases were combined for different divisions, you would

21     not have -- you wouldn't have the separate expenses,

22     that those expenses would be mitigated.

1           And what I'm trying to establish is that if  
2   these cases had been filed at the same time as  
3   Vermilion, you still would have had these specific  
4   issues that would have had to have been addressed in  
5   that case. So they are --

6           JUDGE ALBERS: I see the point you're making, but  
7   can we make it a little bit easier, shall we say.

8           MS. GALIOTO: Q. You agree that the operating  
9   division specific issues that we are addressing in  
10   these cases were not issues that would have been  
11   addressed in rate filings for other divisions?

12          MS. BUELL: Again, Your Honor, I object. It's  
13   beyond the scope of her testimony.

14          MS. GALIOTO: It's the same.

15          JUDGE ALBERS: I guess I see the point you're  
16   making. If you feel like you've made it -- I think  
17   you've made it, so you can --

18          MS. GALIOTO: Okay.

19          JUDGE ALBERS: When I agree with the point, I just  
20   understand what you're saying. I want that clear as  
21   well.

22          MS. GALIOTO: Q. Ms. Pearce, does it take

1 additional witness and lawyer time to address each  
2 issue in a case?

3 A. From the Company's perspective?

4 Q. Yes.

5 MS. BUELL: Well, I object then again, Your  
6 Honor, because I don't think Ms. Pearce is in a  
7 position to know exactly what goes on within Aqua -- I  
8 guess that's the Company we're referring to -- with  
9 respect to lawyer time and other time that goes into  
10 each issue.

11 MS. GALIOTO: Your Honor, the witness has  
12 testified that if cases were consolidated, lawyer  
13 time, lawyer expense would go down. She has testified  
14 to what expense, you know, lawyers should have.

15 And I'm testing her knowledge as to whether  
16 she actually knows what drives those expenses.

17 MS. BUELL: Well, in fact, Your Honor, she has  
18 been allowed the Company's outside legal expenses. I  
19 don't think that's an issue.

20 MS. GALIOTO: It is an issue because the Company  
21 wants to recover its actual costs in this case. And  
22 those actual costs are in excess of the original

1     projections.   So it is still an issue.

2                 It's also an issue because still on the table  
3     is whether or not future cases need to be filed at the  
4     same time.

5                 MS. BUELL:   Well, it may be an issue.   I don't  
6     think your question relates to those issues.

7                 MS. GALIOTO:   I believe it does.

8                 JUDGE ALBERS:   To the extent that Ms. Pearce can  
9     answer the question, I'll allow it.   However, you  
10    certainly have an opportunity on redirect to recover.

11                MS. BUELL:   Thank you, Your Honor.

12                JUDGE ALBERS:   Whatever you think is appropriate.

13                MS. GALIOTO:   Q.   Ms. Pearce, in your opinion does  
14    it take additional witness and lawyer time to examine  
15    information with respect to additional issues?

16                A.    I can't say.   I think it would depend on the  
17    particulars of the situation.

18                Q.    What about to conduct discovery?

19                A.    It might.   It would depend.   The amount of  
20    discovery varies from case to case.

21                Q.    Do you acknowledge that the same test-year  
22    information was used as the basis for these rate-

1 division filings as was used for the Vermilion filing?

2 A. I believe it was, yes.

3 Q. Do you believe there were economies from  
4 using the same test-year information?

5 A. Economies that the Company realized?

6 Q. Savings.

7 A. There may have been.

8 Q. When you assess the bad-debt expense, you  
9 have again used a historical write-off period.  
10 Correct?

11 A. Yes.

12 Q. And that is the sole indicator you have set  
13 forth to predict future levels of bad-debt expense?

14 A. I used an average of the last five years'  
15 write-offs.

16 Q. But you solely looked at this historical  
17 information that is the basis for your proposal?

18 A. That's the basis of my proposed adjustment.

19 Q. Now, in terms of what costs would be  
20 mitigated should rate cases be filed together, you  
21 have only identified the rate of return on equity  
22 witness and outside counsel fees as being areas where

1 costs would go down. Is that correct?

2 A. Do you have a reference to my testimony?

3 Q. Yes, I do. Just give me a minute.

4 I believe it's in 6.0. Well, rather than  
5 searching for this, let me ask this. Sitting here  
6 today, can you identify any other areas where costs  
7 would allegedly go down?

8 A. Any other areas than --

9 Q. Than return on equity witness or outside  
10 counsel fees.

11 A. The Company in its response to one of my data  
12 requests 104 indicated that in a prior case one of  
13 their divisions had benefited from greater economies  
14 of being filed with the larger division.

15 And they identified certain areas. They said  
16 costs associated with the cost of equity rate of  
17 return, development of total company schedules, common  
18 expenses and accounting issues resulted in economies  
19 noted.

20 Q. Ms. Pearce, have you identified what dollar  
21 amount would have been allegedly saved had these cases  
22 been filed with Vermilion?

1           A.     No, I don't believe I did.

2           Q.     Did you conduct that type of an analysis?

3           A.     No.

4           Q.     Can you determine sitting here today what  
5 savings would be incurred by filing future divisions  
6 together? Can you quantify those savings?

7           A.     I cannot quantify those savings. I can  
8 identify that there would be potential for savings  
9 just merely --

10           MS. GALIOTO: Objection. No question pending.

11           JUDGE ALBERS: Sustained.

12           MS. GALIOTO: Q. Ms. Pearce, subject to check  
13 would you agree that you have submitted 498 data  
14 requests including subparts to the Company in this  
15 proceeding?

16           A.     My records indicate that I've sent 32 sets of  
17 data requests. I don't know how many subparts would  
18 add up to.

19           Q.     Is there anything about the number 498 that  
20 would appear not to approximate the number including  
21 each number within the data request as well as each  
22 subpart?

1 MS. BUELL: Objection, Your Honor. She's already  
2 said she doesn't know.

3 JUDGE ALBERS: Sustained.

4 MS. GALIOTO: Q. Ms. Pearce, I want to direct  
5 you to Mr. Jack Schreyer's testimony, rebuttal  
6 testimony. If you could turn to page --

7 A. I don't have that in front of me.

8 Q. Okay. I'll bring you a copy.  
9 If you would turn to -- if you would turn to  
10 page 26, lines 543 to 550.

11 A. Yes.

12 Q. And does that testimony note that the Company  
13 had provided additional support for its rate-case  
14 expense to you in response to discovery?

15 A. Yes.

16 Q. Okay. And if you would turn then to page 32,  
17 lines 684 to 688. And again, does that testimony  
18 indicate that the Company had submitted actual legal  
19 invoices to you through the discovery process?

20 A. Yes.

21 Q. Now, I'd like you to take a look at your  
22 rebuttal testimony. Page 14, discussion of outside

1     legal costs, lines 284 through 287, you testify with  
2     regard to the information you reviewed by the Company  
3     in response to Data Request BAP 107, 206, and 305.  
4     Is that correct?

5         A.     Yes.

6         Q.     In response to Mr. Schreyer, did you review  
7     the invoices, outside legal invoices that were  
8     submitted to you in response to those data requests?

9         A.     In response to --

10        Q.     In response to Mr. Schreyer identifying in  
11     his rebuttal testimony that he had provided you this  
12     information in discovery, did you review it for  
13     purposes of preparing your rebuttal testimony?

14        A.     Yes.

15        Q.     And did you believe that -- strike that.

16               Based on the information the Company provided  
17     within those data requests, you found that the actual  
18     invoices supported the Company's original projection  
19     of rate-case expense.

20               Is that what your testimony states here?

21        A.     Based on the information provided to me by  
22     the Company at the time I filed my rebuttal, which

1     consisted primarily of copies of the actual invoices,  
2     I concluded that it appeared likely the estimate would  
3     be supported by the ultimate costs.

4         Q.     Okay.  And you included this information in  
5     your rebuttal testimony?

6         A.     Yes.

7         Q.     In doing so, did you believe that it was  
8     responsive to Mr. Schreyer's rebuttal testimony?

9         A.     I simply reviewed the additional information,  
10    the supplemental responses that were provided to me by  
11    the Company for the purposes of evaluating the  
12    estimates included in the filing.

13                It was apparent from the supplemental  
14    responses that additional costs had been incurred.

15         Q.     Okay.  Strike that.

16                You also conducted an examination of the  
17    invoices -- strike that.

18                Turn to page 15 through 16 or, actually,  
19    through 17.  At this point in your testimony you  
20    discuss the results of your review of information  
21    provided in response to Data Request BAP 1.08, 2.07,  
22    and 3.06.  Is that correct?

1           A.     Yes.

2           Q.     And is that information the actual invoices  
3     the Company had provided to you for all items other  
4     than outside legal fees?

5           A.     It consisted of copies of the invoices as  
6     well as summaries of the expenses that were prepared  
7     by the company.

8           MS. GALIOTO:   Okay.   Your Honor, may I approach  
9     the witness?

10          JUDGE ALBERS:   With?

11          MS. GALIOTO:   I've got some documents to hand  
12     her.

13          JUDGE ALBERS:   What are they?

14          MS. GALIOTO:   Responses to her data requests.

15          JUDGE ALBERS:   All right.

16          MS. BUELL:   Your Honor, Staff is going to have the  
17     same objection if counsel intends to have the witness  
18     read the Company's responses to data requests into the  
19     record.

20          JUDGE ALBERS:   We'll see what happens.

21          MS. GALIOTO:   Q.   Ms. Pearce, I'm handing you an  
22     e-mail -- actually, let me hand you something else

1 first.

2 I'm handing you an e-mail dated March 15th.

3 Are you a recipient on the e-mail?

4 A. Yes.

5 Q. Do you recognize it?

6 A. Yes.

7 Q. Is a document I'm handing you that is marked

8 a data request BAP 1.07 one of the documents that was

9 provided in response to that e-mail?

10 A. It appears to be.

11 Q. And is there an answer that identifies some

12 Bates-range documents?

13 A. Yes.

14 Q. Are these the documents that were provided?

15 A. They appear to be the ones that I saw

16 electronically. They did not have this label, but

17 they appear to be legal invoices for the period of

18 January and February, which I believe we were

19 furnished in response to the March 15th supplement.

20 Q. And did you review this information at the

21 time you received it or --

22 A. Yes.

1 Q. -- at a reasonable time thereafter? Okay.

2 I'm handing you another e-mail dated March

3 18th. Do you recognize yourself as a recipient?

4 A. Yes.

5 Q. And are you -- do you recognize the e-mail?

6 A. Yes.

7 Q. I'm handing you a document again marked BAP

8 1.07 dated March 18, 2005. Do you recognize that as

9 an answer to your data request?

10 A. Yes.

11 Q. And again, is there a Bates-numbered document

12 identified?

13 A. Yes.

14 Q. And I'm handing you three documents. Can you

15 confirm that those are the documents identified?

16 A. Yes.

17 Q. I'm handing you an e-mail dated March 25,

18 2005. Do you recognize yourself as a recipient?

19 A. Yes.

20 Q. Do you recognize this document which is

21 marked as your Data Request BAP 1.07 dated March 25,

22 2005, as a document provided with that e-mail?

1           A.     Yes.

2           Q.     And does the answer set forth Bates-range  
3 numbers?

4           A.     Yes, it does.

5           Q.     I'm handing you a Bates-range documents. Are  
6 those the same documents as identified in the e-mail?

7           A.     Yes. I'm now handing you an e-mail dated  
8 April 13, 2005. Do you recognize yourself as a  
9 recipient?

10          A.     Yes.

11          Q.     I'm handing you a document BAP 1.07. Is that  
12 a document provided with that e-mail?

13          A.     Yes.

14          Q.     And again, the Bates ranges, are those  
15 documents the ones identified in the answer?

16          A.     They appear to be, yes.

17          Q.     I'm handing you a copy of an e-mail dated  
18 May 10, 2005. Do you recognize yourself as a  
19 recipient?

20          A.     Yes.

21          Q.     And again, did that provide you with a  
22 document BAP 1.07?

1           A.     Yes.

2           Q.     And does that answer identify certain Bates  
3 ranges?

4           A.     Yes.

5           Q.     I'm handing you a set of documents with  
6 Bates-range identifications. Are those the documents  
7 that were provided with the e-mail?

8           A.     They appear to be.

9           Q.     I'm handing you what is dated June 14, 2005  
10 e-mail. Do you recognize yourself as a recipient?

11          A.     Yes.

12          Q.     I'm handing you BAP 1.07. Do you recognize  
13 that as an answer to your data request that was  
14 provided with the e-mail?

15          A.     Yes.

16          Q.     And I am handing you a group of documents  
17 with Bates numbers. Can you confirm that those were  
18 the documents provided with the e-mail?

19          A.     They appear to be, yes.

20          Q.     I'm handing you an e-mail dated July 9,  
21 2005. Do you recognize yourself as a recipient?

22          A.     Yes.

1           Q.    Do you recognize this answer to BAP 1.07 as a  
2 document provided with that e-mail?

3           A.    Yes.

4           Q.    And is there a group of Bates range numbers  
5 identified in the answer?

6           A.    Yes.

7           Q.    I'm handing you a group of documents with  
8 Bates-range numbers. Can you confirm that those were  
9 the documents provided?

10          A.    They appear to be, yes.

11          Q.    I'm handing you an e-mail dated July 20,  
12 2005. Can you confirm that you were a recipient?

13          A.    Yes.

14          Q.    Was there a document BAP 1.07 answer that was  
15 provided along with that e-mail?

16          A.    Yes.

17          Q.    And is there a group of documents identified  
18 by Bates range within the answer?

19          A.    Yes.

20          Q.    And can you confirm that these are the  
21 documents with the same Bates-range numbers?

22          A.    They appear to be.

1           Q.    I'm handing you another e-mail dated July 20,  
2   2005.  Do you recognize yourself as a recipient?

3           A.    Yes.

4           Q.    Do you recognize an answer to BAP 1.07 as a  
5   document that was provided?

6           A.    Yes.

7           Q.    And is there a group of Bates-range numbers  
8   identified at the bottom?

9           A.    Yes.

10          Q.    And are the documents I'm handing you the  
11   documents that were provided with those Bates range?

12          A.    Yes.

13          Q.    I'm handing you an e-mail dated March 15,  
14   2005.  Do you recognize yourself as a recipient?

15          A.    Yes.

16          Q.    I'm handing you a document that is a response  
17   to BAP 2.06.  Do you recognize that as an answer to  
18   your data request?

19          A.    Yes.

20          Q.    I'm also handing you a document that is an  
21   answer to BAP 3.05.  Do you recognize that as an  
22   answer to your data request?

1           A.     Yes.

2           Q.     Can you confirm that both of these documents  
3     were provided with the e-mail of March 15, 2005?

4           A.     Yes.

5           Q.     Can you confirm that the documents I'm  
6     providing you are the documents that correspond to  
7     those Bates-range numbers?

8           A.     Yes.

9           Q.     Handing you an e-mail dated March 18, 2005,  
10    do you recognize yourself as a recipient?

11          A.     Yes.

12          Q.     I'm again handing you two responses to Data  
13    Requests BAP 2.06 and BAP 3.05. Do you recognize  
14    these as answers to your data requests?

15          A.     Yes.

16          Q.     And do you recognize them as documents or as,  
17    yes, as documents that were provided with the March  
18    18, 2005 e-mail?

19          A.     Yes.

20          Q.     I'm handing you a copy of a document with a  
21    Bates-range number. Do you recognize that as the  
22    document that was provided in response to your data

1 request?

2 A. Yes.

3 Q. I'm handing you an e-mail dated April 13,  
4 2004, or 2005. Do you recognize yourself as a  
5 recipient?

6 A. Yes.

7 Q. I'm handing you two documents that are  
8 responses to your Data Requests BAP 2.06 and 3.05. Do  
9 you recognize these as answers to your data requests?

10 A. Yes.

11 Q. I'm handing you a group of documents with  
12 Bates-range identifiers. Do you recognize these  
13 documents as the ones provided in response to your  
14 data request?

15 A. They appear to be.

16 Q. I'm handing you a document that was an e-mail  
17 dated May 10, 2005. Do you recognize yourself as a  
18 recipient?

19 A. Yes.

20 Q. I'm handing you two documents. Can you  
21 confirm that these are answers to your Data Request  
22 BAP 2.06 and BAP 3.05?

1           A.     Yes.

2           Q.     And can you confirm that the documents I'm  
3     handing you are the documents that were provided in  
4     response to those data requests?

5           A.     They appear to be.

6           Q.     I'm handing you another e-mail document.  If  
7     I could direct your attention to the first original  
8     message.  Do you recognize yourself as a recipient?

9           A.     Yes.

10          Q.     And this e-mail is dated June 14, 2005?

11          A.     Yes.

12          Q.     I'm handing you -- can you confirm that these  
13     two documents I'm now handing you are answers to BAP  
14     2.06 and 3.05?

15          A.     Yes.

16          Q.     And can you confirm that the documents I'm  
17     handing you now are the documents that were provided  
18     in response to those data requests?

19          A.     Yes.

20          Q.     I'm handing you an e-mail original message  
21     dated July 8, 2005.  Do you recognize yourself as a  
22     recipient of the original message?

1           A.     Yes.

2           Q.     I'm handing you -- can you confirm that the  
3     two documents I'm handing you are responses to your  
4     BAP 2.06 and 3.05?

5           A.     Yes.

6           Q.     And again, is there a Bates range identified?

7           A.     Yes.

8           Q.     And are the documents I'm handing you the  
9     documents with the associated Bates range?

10          A.     Yes.

11          Q.     I'm handing you an e-mail dated July 20,  
12     2005. Do you recognize yourself as a recipient?

13          A.     Yes.

14          Q.     I'm now handing you two documents. Can you  
15     confirm that these are answers to your BAP 2.06 and  
16     3.05?

17          A.     Yes.

18          Q.     And is there a set of Bates-range numbers in  
19     the answers to those data requests?

20          A.     Yes.

21          Q.     Did the documents that I'm handing you now  
22     contain the same Bates numbers?

1           A.     Yes.

2           Q.     Ms. Pearce, I'm handing you an e-mail dated  
3     July 20, 2005. Are you a recipient?

4           A.     Yes.

5           Q.     Are the two documents I'm handing you  
6     responses to your Data Requests BAP 2.06 and 3.05 that  
7     were provided with that e-mail?

8           A.     Yes.

9           Q.     And are the documents I'm handing you now  
10    Bates-range documents that were also provided with  
11    those data requests?

12          A.     Yes.

13          Q.     Ms. Pearce, you've reviewed this information  
14    at the time you received it or within a reasonable  
15    time thereafter. Correct?

16          A.     Yes.

17          Q.     And your positions set forth in your rebuttal  
18    testimony relies on the Company's responses to those  
19    data requests. Is that correct?

20          A.     My rebuttal testimony considered the  
21    documentation that I had been provided by the Company  
22    as of July 7th, the date that my rebuttal testimony

1 was filed.

2 Q. And the additional responses to your data  
3 requests that were received subsequent to that date  
4 you have reviewed those as well, have you?

5 A. I have given them a cursory review, but I  
6 would note that in my rebuttal testimony I accepted  
7 the estimate that the Company included in its initial  
8 filing.

9 Q. Based on the information provided subsequent  
10 to the date that you filed your rebuttal testimony, do  
11 you believe that the Company is going to exceed its  
12 estimate of outside counsel fees for these  
13 proceedings?

14 A. It may.

15 Q. If I were to tell you subject to check that  
16 outside-counsel fees for the Oak Run Division totalled  
17 \$46,760 as of July 19th, would you have a reason to  
18 believe that number would not be accurate?

19 MS. BUELL: Objection, Your Honor. This is new  
20 information that is now being added to the record on  
21 the date of the hearing. And it's inappropriate and  
22 unfair to Ms. Pearce.

1 MS. GALIOTO: She has had this information for  
2 months. We just established that It has been provided  
3 to her continuously over the course of this  
4 proceeding.

5 She testifies based on this information to  
6 her position as to what the Company's rate-case  
7 expense should be and the Company -- or actually,  
8 Linda, I still don't have a copy of this from you.

9 But your response to our third set of data  
10 requests I believe you did state -- we sent out a  
11 third data request following our surrebuttal asking if  
12 any additional information that had been provided was  
13 basis for a change in the Staff's position.

14 And I believe you responded that Staff would  
15 testify if they had a change in position with regard  
16 to any of this stuff today.

17 And I want to know if the additional invoices  
18 that were provided to her is a basis for her to  
19 increase the outside legal fees that she recommends be  
20 allowed within this proceeding.

21 MS. BUELL: I'm not sure what you're asking her.  
22 You asked her about invoices received after July 17th

1     and that she'd had them for months to review. And of  
2     course, she couldn't have. So I object to that.

3             Also it wasn't clear to me if you're asking  
4     her if she had changed her position.

5             MS. GALIOTO: The documents have been provided  
6     since the time of Ms. Pearce's rebuttal testimony.

7             And I would like to know based on her review  
8     of those documents if she would be recommending a  
9     change in position with regard to whether the  
10    Company's outside legal costs should be increased. I  
11    would like to know her opinion on that.

12            MS. BUELL: That wasn't what you asked her,  
13    though.

14            JUDGE ALBERS: I'm a bit troubled by some of this  
15    because coming into the hearing yesterday, it was my  
16    understanding that the question of outside legal  
17    expense had been resolved, was no longer in disputed  
18    and that the proposal on that particular paragraph of  
19    Mr. Bunosky -- and I can't recall the page number or  
20    line numbers -- is really an alternative suggestion,  
21    if you will, not an attempt to recoup further legal  
22    expenses.

1           And in light of that, I myself changed some  
2   of my questions thinking that the legal expenses were  
3   no longer an issue. So what troubles me is the last-  
4   minute nature of trying to increase the legal expense  
5   that would be recovered in this case.

6           MS. GALIOTO: Your Honor, there is no last-minute  
7   nature with regard to this issue. Mr. Schreyer  
8   testified in his testimony that based on the invoices  
9   to date -- and again, these were not finalized, they  
10   will not be finalized till the end of the case.

11           But up through July 19th when he filed his  
12   surrebuttal the invoices had reached a point where the  
13   Company was going to exceed its original projections  
14   for outside legal costs.

15           And that was -- that excess incursion of  
16   expense is a reason that the Company believes its  
17   original total rate-case expense is supported and a  
18   reason why, if you look at this on a piecemeal basis,  
19   that outside legal should be increased.

20           And that it is the Company's position that  
21   that should take place. So I do not think this is a  
22   completely settled issue.

1 JUDGE ALBERS: Okay. Why don't we recess about  
2 five minutes. I need to check one of the rules.

3 (Whereupon a short recess  
4 was taken.)

5 JUDGE ALBERS: Did you have a further comment?

6 MS. GALIOTO: Yes, Your Honor.

7 In describing the Company's position on rate-  
8 case expense, I'm afraid I may have given a wrong  
9 impression as to what the Company's request is.

10 Rate-case expense can be looked at as a total  
11 overall projection and then as subset components,  
12 being outside legal or rate department, miscellaneous  
13 outside witnesses. And the Company continues to stand  
14 by its original total rate-case projection.

15 However, some of those underlying components  
16 have changed. For instance, the Company acknowledges  
17 that its rate-department expense was not as much as it  
18 had been but that cost was shifted onto outside  
19 legal.

20 So when I said an increase in outside legal,  
21 it's that shift in how the burden is actually being  
22 felt that I was describing. But the Company stands by

1     its original overarching projection of what rate-case  
2     expense is.

3             MS. BUELL:   Your Honor, Staff disagrees with  
4     that.   In fact, Staff uses the Commission's rules with  
5     respect to test years.   And we're dealing with a  
6     future test year here.

7             And what Part 287 says is that a utility  
8     shall not be allowed more than one updated filing.  
9     The Company did that in its rebuttal testimony.  
10    Ms. Pearce filed her rebuttal testimony based on the  
11    Company's rebuttal testimony.

12            And so this idea of shifting and moving costs  
13    is totally inconsistent with Commission rules.   Staff  
14    does not agree with what the Company is doing at all.  
15    It's incorrect.

16            MS. GALIOTO:   Your Honor, I disagree with what an  
17    updated rate filing is.   I think identifying a change  
18    on how you believe an original projection is being met  
19    does not constitute an updated rate filing.

20            JUDGE ALBERS:   What constitutes an update, then?

21            MS. GALIOTO:   If there is further information from  
22    -- that impacts the total case that you would

1     literally file a new update that would advance, like,  
2     for instance, if you file, you know, in June 31st of  
3     the year and then at the end of October you have  
4     another quarter under your belt and you file the  
5     updated information with regard to that quarter  
6     totally.

7           JUDGE ALBERS:   Isn't that what you did with  
8     updated costs for rate-base expenses?

9           MS. GALIOTO:   Your Honor, what we have done with  
10    updated cost of rate-base expense, we haven't updated  
11    the original projection.  It's exactly the same as it  
12    was in the original filing.  The Company's current  
13    position is no different than the position that Staff  
14    has taken --

15          JUDGE ALBERS:   Well, okay.

16          MS. GALIOTO:   Staff hasn't looked at the actual  
17    invoices.

18          JUDGE ALBERS:   As indicated, I'm troubled by the  
19    fact that looking at the rebuttal testimony, I thought  
20    this was a done issue.  And it looks like it's been  
21    opened up again.

22                 The best thing I can determine to do is

1 attempt to update the rate-case test year. And I am  
2 not inclined to allow further questioning on Staff's  
3 opinion of anything submitted after they submitted  
4 their surrebuttal testimony.

5 MS. GALIOTO: Staff relied on this information in  
6 arriving at its position in this case that rate-case  
7 expense should be lowered. And I want to know if she  
8 looked at the actual invoices.

9 And I haven't gotten to them. I have them  
10 all here. We can go through the same process. But  
11 she testified that she relied on this and reviewed  
12 this in coming up with her position.

13 JUDGE ALBERS: I understand what you're saying.  
14 And I've heard enough on this question and we're going  
15 to move on.

16 MS. GALIOTO: Okay. I would like to move for  
17 admission into the record the responses to  
18 Ms. Pearce's data requests that we have been  
19 discussing as cross exhibits.

20 JUDGE ALBERS: Make that one a group cross  
21 exhibit.

22 MS. GALIOTO: I would like to move this in as

1 well. We can go through the same foundations.

2 JUDGE ALBERS: What is that exactly?

3 MS. GALIOTO: The ones we went through were  
4 outside legal, and these are the other rate-case-  
5 expense invoices. And I can establish foundation with  
6 all of these as well.

7 I would like to move them in as cross  
8 exhibits. I understand that you have said you're not  
9 going to allow further testimony on this, but I would  
10 like my cross exhibits in.

11 JUDGE ALBERS: Well, okay, as I understand the  
12 cross exhibits, as I understand the documents you  
13 questioned Ms. Pearce about several moments ago were  
14 referenced in the -- in her rebuttal testimony as  
15 documents that she received from the Company.

16 MS. GALIOTO: They are -- she referenced within  
17 her rebuttal testimony that she relied on documents  
18 being provided in response to these data requests as  
19 the basis for her position on these issues.

20 JUDGE ALBERS: Okay. But are those also  
21 referenced in her rebuttal testimony?

22 MS. GALIOTO: Yes, they are.

1 JUDGE ALBERS: The second batch there?

2 MS. GALIOTO: Yes.

3 MS. BUELL: Your Honor, Staff objects to the  
4 introduction of all of these documents into the  
5 record. This is another attempt to get the same  
6 documentation into the record that you did not allow  
7 this morning.

8 It's new information being provided to the  
9 Commission on the day of the hearing. And it's a  
10 longstanding Commission practice that this type of  
11 information is prejudicial and unfair to Staff. It  
12 should not be allowed.

13 MS. GALIOTO: This is not new information. We've  
14 established it's provided every single month.

15 JUDGE ALBERS: Well, what I want to know is with  
16 regard to the data requests that you referenced in her  
17 rebuttal testimony, are those the same documents that  
18 you just went through with her?

19 MS. GALIOTO: Those -- there are -- well, yes, in  
20 part. She referenced the ones I just went through,  
21 and she also referenced the new ones.

22 JUDGE ALBERS: Okay. But as far as any updates or

1 supplements, whatever you want to call it, was that  
2 part of what you went through with her a few minutes  
3 ago?

4 MS. GALIOTO: I went through with her everything  
5 up to the time she field her rebuttal testimony and  
6 everything that we provided pursuant to her data  
7 request subsequent thereto.

8 And again, I reference Staff's answer to our  
9 third set of data requests where Staff said if we  
10 wanted to ask one of the witnesses --

11 JUDGE ALBERS: I don't know what kind of data  
12 requests are exchanged for the parties, nor do I want  
13 to get into every piece of paper that you parties  
14 exchanged amongst yourself.

15 MS. GALIOTO: Nor do we want you to, Your Honor,  
16 which is -- before this was the -- when Ms. Pearce  
17 filed her direct testimony, she had a different  
18 analysis of how she went about rate-case expense. And  
19 it was unnecessary to submit every actual invoice.

20 We didn't want to flood the record. We don't  
21 want to submit data-request responses into the record  
22 unless it's necessary to do so. I mean, if we had to

1 submit support for every aspect of our case in  
2 rebuttal testimony, you would have every DR response  
3 here. We didn't do that because it wasn't necessary.

4 JUDGE ALBERS: Sitting here right now, I am not  
5 sure which aspects of the rate-case expense are or are  
6 not contested at this point.

7 Therefore, for purposes of cross-examination,  
8 I will permit you to offer as a cross exhibit those  
9 DRs and responses referenced in Ms. Pearce's rebuttal  
10 testimony that she received up to and including July  
11 7th of this year since that's the date of her rebuttal  
12 testimony.

13 MR. BALOUGH: Your Honor --

14 JUDGE ALBERS: Since that's what she apparently  
15 relied upon in coming to that conclusion.

16 MR. BALOUGH: Your Honor, I have a question and  
17 possibly an objection.

18 Are you admitting these? If they are  
19 admitted, are they admitted from the purpose that she  
20 received them or are they admitted for the underlying  
21 truth that those are the actual bills, that that work  
22 was actually performed --

1 JUDGE ALBERS: As I indicated, I am not sure at  
2 this point which of the rate-case expenses are still  
3 in dispute.

4 And if Ms. Galioto would like to use these  
5 DRs responses as -- in an attempt to bolster her  
6 position as far as those disputed rate-case expenses,  
7 I'll allow her to reference those and use those since  
8 that apparently is what Ms. Pearce relied upon --

9 MR. BALOUGH: Your Honor, to the extent that she  
10 prepared testimony, it is different than whether she  
11 is now testifying as to the truth and accuracy of each  
12 of these bills.

13 JUDGE ALBERS: Ms. Pearce cannot testify to the  
14 truth and accuracy of the bill itself, only that she  
15 received that and relied upon it.

16 MS. GALIOTO: And Your Honor, just to clarify the  
17 record, the associations have received these documents  
18 through discovery as well. And not a single witness  
19 has disputed that these were actually incurred, so  
20 that's a new issue that is not --

21 JUDGE ALBERS: Okay.

22 MS. GALIOTO: Well, I just don't want it to be

1     raised when we can't file testimony in response to it,  
2     so.

3             JUDGE ALBERS:  You get the last bite at the  
4     testimony.  So hopefully, you know -- go ahead with  
5     any other documents.  And I trust that that first  
6     bunch you went through with her, you've already pulled  
7     out the postJuly 7th ones.

8             MS. GALIOTO:  I have not.  And I would need to  
9     pull out postJuly 7th with these as well.  I did not  
10    group them by pre and post.

11            And I also am curious whether counsel would  
12    be willing to stipulate that these are the documents  
13    she received or do we need --

14            MS. BUELL:  There's no way that I can stipulate to  
15    that.  I simply don't know.

16            MS. GALIOTO:  So we'll go through the same  
17    exercise.

18            JUDGE ALBERS:  Okay.

19                               (Whereupon there was then had  
20                               an off-the-record discussion.)

21            MS. GALIOTO:  May I approach the witness?

22            JUDGE ALBERS:  Yes.

1 MS. GALIOTO: Q. Ms. Pearce, I'm handing you an  
2 e-mail dated June 4, 2005. Do you recognize yourself  
3 as a recipient?

4 A. Yes.

5 Q. And can you confirm that this answer to your  
6 BAP 1.08 was provided with that e-mail?

7 A. Yes.

8 Q. And does the answer to the data request  
9 contain certain Bates-number ranges?

10 A. Yes.

11 Q. And can you tell me -- I'm handing you a  
12 group of documents. Can you confirm that those are  
13 the documents that were provided with that answer to  
14 your data request?

15 A. They appear to be.

16 Q. I'm handing you an e-mail dated July 7,  
17 2005. Do you recognize yourself as a recipient?

18 A. Yes.

19 Q. And do you recognize this as the answer to  
20 your Data Request BAP 1.08 that was provided at that  
21 time?

22 A. Yes.

1           Q.     And I'm handing you a group of documents.  
2     Can you confirm that these are the documents that were  
3     provided with that data-request response?  
4           A.     They appear to be.  
5           Q.     I'm handing you an e-mail dated June 3,  
6     2005. Do you recognize yourself as a recipient?  
7           A.     Yes.  
8           Q.     I'm handing you a document, answer to Data  
9     Request BAP 2.07. Can you confirm that that document  
10    was provided with the e-mail response?  
11          A.     Yes.  
12          Q.     I'm handing you a group of documents. Can  
13    you confirm that these were the documents provided  
14    with that answer to your data request?  
15          A.     They appear to be.  
16          Q.     I'm handing you a response, a second data-  
17    request response of the same date. Can you also  
18    confirm that that was provided with the e-mail?  
19          A.     Yes.  
20          Q.     And does this -- is this a response to your  
21    Data Request BAP 3.06?  
22          A.     Yes.

1 Q. And does it contain a set of Bates numbers?

2 A. Yes.

3 Q. Can you confirm that these are the documents  
4 provided?

5 A. They appear to be.

6 Q. And I'm handing you a data-request response  
7 dated July 7, 2005. Can you confirm that you are a  
8 recipient?

9 MS. BUELL: Objection. I thought we weren't going  
10 to allow anything that was submitted after her  
11 rebuttal testimony.

12 MS. GALIOTO: I think the Judge said July 7th was  
13 the date.

14 JUDGE ALBERS: Is that the date of the rebuttal  
15 testimony?

16 MS. BUELL: Yes. That's the day it was filed,  
17 Your Honor.

18 MS. GALIOTO: This e-mail has got a time on it of  
19 4:54 p.m.

20 JUDGE ALBERS: July 7th?

21 THE WITNESS: (Nodded head affirmatively.)

22 MS. BUELL: Your Honor, Staff had filed its

1       rebuttal testimony by that time.

2           JUDGE ALBERS:   Be hard to change things at that  
3       point, wouldn't it?   We'll leave that one out.

4           MS. GALIOTO:    Okay.   I think there was another  
5       July 7th in there.   And Your Honor, how would you like  
6       these three exhibits marked or would you like it all  
7       as a single exhibit?

8           JUDGE ALBERS:    3.

9           MS. GALIOTO:    The first one is outside legal  
10       invoices.   The second is inside or not inside, but  
11       other invoices other than outside legal.   And I  
12       believe they are for -- one's for Oak Run and one's  
13       for Woodhaven.   That's why I said three.

14          JUDGE ALBERS:    Okay.

15          MS. GALIOTO:    So we can do them all together.

16          JUDGE ALBERS:    Why don't we just make it a group  
17       exhibit.

18          MS. GALIOTO:    Okay.   Okay.

19          MS. BUELL:    Your Honor, if we're talking about  
20       entering these additional documents into the record, I  
21       have the same objection that I had before.   They're  
22       inappropriate.

1           They're introducing new testimony,  
2   information into the record on the day of the  
3   hearing.  There's a longstanding Commission practice  
4   against this.  And it also runs contrary to the  
5   Commission's rules in Part 287.

6           JUDGE ALBERS:  Noted.

7           Any other objections?

8           MR. BALOUGH:  Yes, Your Honor.  To the extent that  
9   these documents are going to be admitted to show that  
10  these invoices were work was actually performed and  
11  paid, that Ms. Pearce is now testifying that, for  
12  example, a bill to Sonnenschein that that work was  
13  done, that that was appropriate the amount of hours  
14  charged, I object to the extent that it shows that she  
15  received these.

16           But I do not object -- I also would request  
17  that sometime we be furnished a copy of this exhibit  
18  since currently there's only one copy.

19           JUDGE ALBERS:  Make a copy for the court reporter  
20  for sure.

21           MS. GALIOTO:  And Your Honor, it is quite bulky.  
22  I'd probably have to leave the site to actually get

1     this copied. Can I submit it once I return to Chicago  
2     and mail a copy or --

3             JUDGE ALBERS: Any objection to that?

4             MR. BALOUGH: No objection.

5             MS. BUELL: Your Honor, will you be holding the  
6     record open until the introduction of all this new  
7     evidence and revised testimony or will you be marking  
8     the record heard and taken prior to that time?

9             JUDGE ALBERS: Well, I suspect that if we're  
10    marking the various revised testimony, we all have the  
11    same understanding what revised testimony constitutes,  
12    there would be no reason to leave the record open  
13    unless something develops between now and the end of  
14    the hearing.

15            MS. BUELL: And I'm asking because of the date of  
16    our initial brief. In that event, could there be  
17    established by which all of the new testimony and new  
18    information will be filed?

19            JUDGE ALBERS: Yeah. We can do that.

20            MS. BUELL: Thank you.

21            MS. GALIOTO: So I am not going to leave this with  
22    her today, but.

1 JUDGE ALBERS: Yeah. You only got one copy. Copy  
2 that one. Go ahead and keep that as a practical  
3 matter. Just send it straight --

4 MS. GALIOTO: And if anyone sees that I've done  
5 something different with what I file, I'm sure you'll  
6 say something. But I hope everyone can trust me on my  
7 honor on that one.

8 JUDGE ALBERS: Just send it to me and I'll have it  
9 stamped and turned in. Aqua Cross Group Exhibit 2.

10 (Whereupon Aqua Cross  
11 Exhibit 2 was marked for  
12 identification.)

13 MS. GALIOTO: And Your Honor, can I do that -- I  
14 mean, I have a small cross exhibit this morning. Can  
15 I send that at the same time or do you want me to make  
16 copies of this one?

17 JUDGE ALBERS: That's fine. Just put them  
18 together. Okay. Then Cross Group Exhibit 2 is  
19 admitted with the objections noted.

20 (Whereupon Aqua Cross  
21 Group Exhibit 2 was admitted  
22 into evidence.)

1 JUDGE ALBERS: And do you have further questions  
2 for Ms. Pearce?

3 MS. GALIOTO: Just give me one second. I think  
4 I'm -- that's all I have, Your Honor.

5 JUDGE ALBERS: Okay. Mr. Balough.

6 CROSS-EXAMINATION

7 BY MR. BALOUGH:

8 Q. Ms. Pearce, in regards to your Cross Exhibit  
9 Number 2 and the invoices that were attached or  
10 included within that exhibit, can you tell me what  
11 steps you took to validate and determine that those  
12 invoices were all proper?

13 MS. GALIOTO: Your Honor, I believe this goes  
14 beyond the scope of anybody's testimony. Nobody has  
15 raised that as an issue. It goes beyond the scope of  
16 Ms. Pearce's testimony.

17 JUDGE ALBERS: I'll going to allow that.

18 THE WITNESS: I reviewed them on the face of it.  
19 They appeared to be copies of actual invoices from  
20 Aqua, Sonnenschein. And I also reviewed the summaries  
21 that were provided by the Company that included the  
22 descriptions and amounts, and I compared those to the

1 amounts that were on the invoices.

2 MR. BALOUGH: Thank you. No other questions.

3 JUDGE ALBERS: Okay.

4 CROSS-EXAMINATION

5 BY JUDGE ALBERS:

6 Q. Mr. Schreyer discusses in his surrebuttal  
7 testimony on page 3 that he believed there was some  
8 errors in Staff Exhibit 6 concerning Aqua's pro forma  
9 present revenues. Does that sound familiar?

10 A. Yes, Your Honor.

11 Q. Do you agree that there were errors?

12 A. No.

13 Q. No. Okay.

14 You stand by your original numbers, your  
15 latest numbers?

16 A. Yes.

17 Q. Okay. And lastly, you recommend prohibiting  
18 the use of the same test year for back-to-back rate  
19 cases. I want to understand what you mean by that.  
20 Could you just elaborate?

21 A. The purpose of this recommendation was to  
22 derive some economies of scale.

1           For instance, I believe that the Vermilion  
2     case that was recently filed utilized 2005 future  
3     test year along with the three divisions in this  
4     proceeding.

5           And the purpose of the recommendation was to  
6     let the Commission know that it would be beneficial if  
7     such filings could be combined.

8         Q.    Okay.  When you say prohibit the use of the  
9     same test year for back-to-back rate cases, does that  
10    mean if the company were to file rate cases for two  
11    divisions in January using an '06 test year, that if  
12    they filed rate cases for two other divisions in July,  
13    they shouldn't use an '06 test year?

14           I just want to make sure I understand the  
15    recommendation.  That's all I'm looking for.

16         A.    I believe in this case the -- the instant  
17    proceeding was filed in late December utilizing 2005  
18    test year.  Vermilion's case was filed back I believe  
19    in May.

20           And it seemed that because of the timing of  
21    utilizing 2005 test year in both dockets, a lot of the  
22    information that we reviewed needed to be -- we needed

1 to ask additional questions in the instant proceeding,  
2 whereas if those had been combined or if this  
3 proceeding had been filed later with a later test  
4 year, it would have -- the information supplied to us  
5 would have been better.

6 JUDGE ALBERS: Okay. I gotcha. Thank you.

7 Any redirect?

8 MS. BUELL: I have a little redirect, Your Honor.  
9 Thank you.

10 REDIRECT EXAMINATION

11 BY MS. BUELL:

12 Q. Ms. Pearce, do you recall when counsel for  
13 Aqua asked you whether you had performed a  
14 quantitative analysis of savings from consolidating  
15 the instant proceeding with the Vermilion proceeding?

16 A. Yes.

17 Q. And you indicated that you had not conducted  
18 a quantitative analysis. Is that correct?

19 A. Yes.

20 Q. But you also indicated that regardless of  
21 that, there was a potential for savings. Could you  
22 please explain that now?

1 MS. GALIOTO: Objection. Beyond the scope. All I  
2 did was ask her if she performed a quantitative  
3 analysis.

4 MS. BUELL: She tried to answer --

5 JUDGE ALBERS: I'll allow it.

6 THE WITNESS: I believe there would be potential  
7 savings obviously from just legal expenses and having  
8 one hearing for multiple divisions versus hearings for  
9 each division separately.

10 The Company itself in response to DRs cited  
11 other potential savings through economies of scale in  
12 utilizing the same test year for the filing and, for  
13 instance, the rate of return witness would be  
14 testifying for one time. And I believe it would  
15 minimize travel and other expenses as well.

16 Q. So are you saying, then, it's logical that  
17 there are savings, you don't really need a  
18 quantitative analysis?

19 A. Yes.

20 Q. And do you also recall when counsel for Aqua  
21 asked you about how many data requests you sent out?

22 A. Yes.

1           Q.     Could you please explain why you sent out the  
2     number of data requests that you did?

3           A.     There were basically two reasons.    The  
4     primary purpose of our data requests is to obtain  
5     recovery to help us to perform our analysis.

6                     And many of our data requests, the purpose  
7     was to attain support for the estimates utilized by  
8     the Company in the filing in the absence of any other  
9     information.

10                    Another reason for the number of DRs was that  
11    we were instructed by the Company to issue a separate  
12    request for each of the three divisions even if the  
13    questions were the same.

14           Q.     Now, Ms. Pearce, when you sent out the data  
15    requests referred to by counsel for Aqua DRs 1.07,  
16    2.06, and 3.05 with respect to outside legal fees,  
17    what type of information did you request?

18           A.     I was seeking support for how the Company  
19    derived its estimates.

20           Q.     And did you receive the type of support that  
21    you thought you were going to receive and thought was  
22    necessary?

1           MS. GALIOTO:  Objection, Your Honor.  There was  
2   never a motion to compel on the Company that it had  
3   provided the wrong information in response to these  
4   data requests.  Ms. Pearce has just testified that she  
5   relied upon the information we provided in coming to  
6   her recommendations to the Commission.

7           This line of questioning is not only beyond  
8   the scope of my cross-examination, but it essentially  
9   is a motion to compel or raises an objection to what  
10  we provided in response.  And there was never any  
11  indication that we were providing something that  
12  wasn't asked for.

13          MS. BUELL:  Your Honor, each and every data  
14  request response that was sent to Ms. Pearce prior to  
15  her rebuttal testimony was just put into the record.  
16  I believe it's appropriate for her to answer why she  
17  asked for that information.

18          JUDGE ALBERS:  Yeah.  I haven't heard anything to  
19  suggest a motion to compel at this point.  I'm curious  
20  as to your question, so I'll allow it.

21          MS. BUELL:  Thank you, Your Honor.

22          THE WITNESS:  The estimate was presumably based on

1 something. And I was seeking support for how the  
2 estimate was derived. I had envisioned perhaps a  
3 budget that would show total number of hours estimated  
4 at some hourly rate.

5 In the absence of that, I evaluated the  
6 information that was provided to me by the Company,  
7 which was copies of the actual invoices and I  
8 performed my own analysis to determine whether I felt  
9 the estimate was supported.

10 MS. BUELL: Q. So then you said you were looking  
11 for some type of budget to support the estimate. What  
12 type of budget were you looking for?

13 A. Budget I would have expected to see something  
14 that encompassed the discovery period, the rounds of  
15 testimony.

16 Q. So particular amounts of money for each stage  
17 of the proceeding, that type of budget?

18 A. Something like that.

19 MS. GALIOTO: Your Honor, I would like to object.  
20 A request for a budget is not contained within the DR.

21 JUDGE ALBERS: You'll have an opportunity for  
22 recross.

1 MS. BUELL: Thank you, Your Honor.

2 Q. And Ms. Pearce, you said instead of getting  
3 the budget type of information that you were looking  
4 for, you got invoices from the Company with respect to  
5 outside legal expenses. Is that correct?

6 A. Yes.

7 Q. And then what did you do with those invoices?

8 A. I compared them to the estimate, and of  
9 course, at the beginning of the case, the actual  
10 expense incurred was much less than the estimate. So  
11 that was not as helpful in tracking whether the  
12 estimate would ultimately be met.

13 As we approached -- as the case progressed,  
14 it became more helpful to have that information. But  
15 it's very difficult early on to utilize that to draw a  
16 conclusion in regard to the estimate.

17 Q. So then are you saying although you did not  
18 get the information that you were really looking for,  
19 you made the best use of the information you were  
20 provided?

21 A. Yes.

22 Q. Now, you were also asked whether you have

1 changed your position with respect to outside legal  
2 expenses since your rebuttal testimony. Would you  
3 please make it clear whether you've changed your  
4 position at all?

5 MS. GALIOTO: Your Honor, if this question is  
6 going to be asked, I would like the basis of the  
7 reason that I asked her that question in the record.

8 JUDGE ALBERS: I agree with you, Ms. Galioto.

9 MS. GALIOTO: Thank you. Therefore can I add  
10 these to my --

11 JUDGE ALBERS: I didn't mean that. I meant --

12 MS. BUELL: I'm sorry, Your Honor?

13 JUDGE ALBERS: You asked her if her position had  
14 changed in response to Ms. Galioto's questions earlier  
15 that were not allowed, if I recall correctly.

16 MS. BUELL: I'm asking Ms. Pearce if her position  
17 has changed since her rebuttal testimony.

18 MS. GALIOTO: If she asks the question, I would  
19 like the reason I asked the question, which is the  
20 rest of the invoices within the record --

21 MS. BUELL: I'll withdraw the question then, Your  
22 Honor.

1 JUDGE ALBERS: Okay.

2 MS. BUELL: Q. Ms. Pearce, when you reviewed  
3 Aqua's filing, what Commission rules did you use? Did  
4 you use Part 287?

5 A. Yes.

6 Q. With respect to the Company's future test  
7 year?

8 A. Yes.

9 Q. And in light of your use of Part 287, in your  
10 opinion is it appropriate for Aqua to update its rate  
11 increase since your rebuttal testimony?

12 MS. GALIOTO: Objection. That calls for a legal  
13 opinion.

14 JUDGE ALBERS: Sustained.

15 MS. BUELL: Q. Ms. Pearce, you were asked about  
16 the use of total rate-case expense, considering rate-  
17 case expense as a total instead of piecemeal. Do you  
18 recall that?

19 A. Yes.

20 Q. And is it correct that you utilize piecemeal  
21 approach taking out the various components of rate-  
22 case expense --

1 MS. GALIOTO: Your Honor, I don't believe I asked  
2 these questions. I remember explaining to you my  
3 clarification of the Company's position, but that was  
4 not a question to Ms. Pearce.

5 JUDGE ALBERS: I seem to recall it the same way.

6 MS. BUELL: I have nothing further, Your Honor.

7 JUDGE ALBERS: Do you have any recross?

8 MS. GALIOTO: Could you just give me a minute?

9 JUDGE ALBERS: Sure.

10 MS. GALIOTO: Thank you, Your Honor. Your Honor,  
11 I really just have one quick line, if I could approach  
12 again.

13 JUDGE ALBERS: Okay.

14 RECROSS-EXAMINATION

15 BY MS. GALIOTO:

16 Q. Ms. Pearce, I'm handing you the data requests  
17 and responses for BAP 3.05, 2.06, 1.07, 1.08, 2.07,  
18 and 3.06.

19 Can you identify for me where the word  
20 "Budget" is included within any of your questions?

21 A. I don't believe it is.

22 MS. GALIOTO: Thank you. No further questions.

1 JUDGE ALBERS: Okay. Thank you, Ms. Pearce.

2 (Witness excused.)

3 JUDGE ALBERS: Hearing no objection, then, Staff

4 Exhibits 1.0 with Schedules 1.01 through 1.10 OR,

5 Schedule 1.01 through 1.08 and 1. 10 WW, and Schedule

6 1.01 through 1.08 and 1.10 WF and Attachments A

7 through Q are admitted as well as Staff Exhibit 6 with

8 Schedule 6.01 through 6.09 OR, Schedule 6.01 through

9 6.10 WW and Schedule 6.01 through 6.10 WS.

10 Just so it's clear, those are all public

11 versions of the testimony and schedules.

12 (Whereupon Staff Exhibit 1.0,

13 Schedules 1.01 through 1.08 WW,

14 1.01 through 1.08 and 1.10 WS,

15 Attachments A through Q;

16 Exhibit 6.0, Schedules 6.01

17 through 6.09 OR, 6.01 through

18 6.10 WW, 6.01 through 6.10 WS

19 were admitted into evidence.)

20 MS. BUELL: Thank you, Your Honor.

21 JUDGE ALBERS: They're all on e-Docket. Correct?

22 MS. BUELL: Correct.

1 JUDGE ALBERS: Thank you.

2 I believe Staff has one more witness?

3 MS. BUELL: Yes. Thank you, Your Honor.

4 Staff calls Janis Freetly to the stand.

5 JANIS FREETLY

6 called as a witness on behalf of the Illinois Commerce

7 Commission Staff, having been previously duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BUELL:

11 Q. Good afternoon, Ms. Freetly.

12 A. Good afternoon.

13 Q. Would you please state your full name and

14 spell your last name for the record.

15 A. My name is Janis Freetly, F-r-e-e-t-l-y.

16 Q. Ms. Freetly, by whom are you employed?

17 A. The Illinois Commerce Commission.

18 Q. And what is your position at the Illinois

19 Commerce Commission?

20 A. I'm a senior financial analyst in the

21 Financial Analysis Division.

22 Q. Ms. Freetly, have you prepared written

1 testimony for purposes of this proceeding?

2 A. Yes, I have.

3 Q. And do you have before you a document which  
4 has been marked for identification as ICC Staff  
5 Exhibit 3.0, which consists of a cover page, table of  
6 contents, 62 pages of narrative testimony, 12 pages of  
7 schedules and is titled Direct Testimony of Janis  
8 Freetly?

9 A. Yes.

10 Q. And is this a true and correct copy of the  
11 direct testimony that you prepared for this  
12 proceeding?

13 A. Yes.

14 Q. And do you also have before you a document  
15 which has been marked for identification as ICC Staff  
16 Exhibit 8.0, consisting of a cover page, table of  
17 contents, 10 pages of narrative testimony, two pages  
18 of schedules and titled Rebuttal Testimony of Janis  
19 Freetly?

20 A. Yes.

21 Q. And is this a true and correct copy of the  
22 rebuttal testimony that you prepared for this

1 proceeding?

2 A. Yes.

3 Q. Ms. Freetly, do you have any corrections to  
4 make to your prepared direct or rebuttal testimony?

5 A. No.

6 Q. And is the information contained in ICC Staff  
7 Exhibits 3.0 and 8.0 and the accompanying schedules  
8 true and correct to the best of your knowledge?

9 A. Yes.

10 Q. And if I asked you the same questions today,  
11 would your responses be the same?

12 A. Yes.

13 MS. BUELL: Your Honor, at this time I would ask  
14 for admission into evidence of Ms. Freetly's prepared  
15 direct testimony marked as ICC Staff Exhibit 3.0,  
16 including the attached schedules, and Ms. Freetly's  
17 prepared rebuttal testimony marked as ICC Staff  
18 Exhibit 8.0, including the attached schedules.

19 And I note for the record these are the  
20 same documents that were originally filed via e-Docket  
21 on May 5th and July 7, 2005.

22 JUDGE ALBERS: Any objection?

1 MS. GALIOTO: No objection, Your Honor.

2 MR. BALOUGH: No objection Your Honor.

3 JUDGE ALBERS: Any questions?

4 MS. GALIOTO: Just a couple, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. GALIOTO:

7 Q. Ms. Freetly, you added 30 basis points to your  
8 recommended cost of equity based on the Commission's  
9 decision in Docket 04-0442. Is that correct?

10 A. That is correct, based on that decision and  
11 also the Commission decision in Docket 03-0403.

12 Q. Can you guarantee that Staff will always add  
13 30 basis points to its cost of equity recommendation  
14 for Aqua Illinois divisions?

15 A. No. I cannot guarantee the future Staff  
16 analysis and decisions, no.

17 MS. GALIOTO: Okay. That's all I had, Your  
18 Honor.

19 JUDGE ALBERS: Okay. Mr. Balough?

20 MR. BALOUGH: No questions.

21 JUDGE ALBERS: That 30 basis point addition was  
22 that because the Commission in the prior rate case --

1 THE WITNESS: Yes.

2 JUDGE ALBERS: Okay. All right. Thank you.

3 Do you have any redirect?

4 MS. BUELL: No, Your Honor, I don't.

5 JUDGE ALBERS: Okay. Thank you.

6 (Witness excused.)

7 JUDGE ALBERS: Anything further from Staff?

8 MS. BUELL: Your Honor, I'm not certain that

9 Ms. Freetly's testimony has been admitted into the

10 record.

11 JUDGE ALBERS: I think you're right about that.

12 Hearing no objection, Staff Exhibit 3.0 with

13 Schedules 3.1 through 3.11 and Staff Exhibit 8.0 with

14 Schedules 8.01 and 8.02 are admitted.

15 (Whereupon Staff Exhibit 3.0,

16 Schedules 3.1 through 3.11,

17 Exhibit 8.0, Schedules 8.01

18 and 8.02 were admitted into

19 Evidence.)

20 JUDGE ALBERS: Anything further for Staff's case?

21 MS. BUELL: No. That's it for Staff, Your Honor.

22 Thank you.

1 JUDGE ALBERS: Off the record.

2 (Whereupon there was then had  
3 an off-the-record discussion.)

4 MS. GALIOTO: Yes, Your Honor. I need to do that.

5 And I also wanted to discuss a schedule, an  
6 expedited schedule for our interlocutory appeal of  
7 your rulings on the motions to strike Mr. Bunosky and  
8 Mr. Schreyer's testimonies.

9 And I would like it extradited so that if the  
10 Commission does allow the evidence in, we will have an  
11 opportunity to utilize it within our initial and reply  
12 brief before you --

13 JUDGE ALBERS: I guess a lot of that will depend  
14 on when you file it.

15 MS. GALIOTO: I will be ready to file -- I can  
16 file on Wednesday. I do need time. That gives me  
17 hopefully a day to get at least the record back.

18 JUDGE ALBERS: No.

19 The initial briefs are scheduled to be turned  
20 in August 23rd, and we would need to have a ruling  
21 from the Commission at the latest on August 17th at  
22 the bench.

1           MS. GALIOTO:  Are they meeting on the 23rd?  Could  
2   we say initial briefs on the 24th so they can rule on  
3   the 23rd?

4           JUDGE ALBERS:  If the parties are agreeable to  
5   that change, I'm not going to worry about a day.

6           MS. BUELL:  Your Honor, were you going to allow an  
7   opportunity for the parties to respond?

8           JUDGE ALBERS:  That's the rest of the wrinkle is  
9   that the rules provide for a response from the  
10  parties.

11                   If you file on the 3rd, are the parties going  
12  to have at least a few days to review.  Might do that  
13  and then there's no guarantee the Commission will rule  
14  on it on the 23rd.

15           MS. GALIOTO:  I understand that.  But I would like  
16  to get it ready for them so if they are ready to rule,  
17  they can.

18           JUDGE ALBERS:  I don't know off the top of my head  
19  what the turn-in deadline is for the Commission's  
20  August 23rd meeting.

21           MS. GALIOTO:  Right.

22           JUDGE ALBERS:  That would obviously factor in

1     here.  If you filed by the 3rd, give the other parties  
2     until say August 9th.

3           MS. BUELL:  Your Honor, Staff requests that there  
4     be a filing time too and that be by 5:00 p.m.  I think  
5     we found out the hard way here that if something isn't  
6     filed on e-Docket before 5:00 p.m. on that date it is  
7     not technically filed till the following day.

8           JUDGE ALBERS:  I think the important thing that  
9     you get it on Wednesday.

10          MS. BUELL:  Excuse me?

11          JUDGE ALBERS:  If you personally receive it on  
12     Wednesday.  I mean, that's the important things in my  
13     eyes.

14          MS. BUELL:  So you're saying service at any time?

15          JUDGE ALBERS:  No.  Service by 5:00 as opposed to  
16     worrying about when it actually gets posted on  
17     e-Docket.

18          MS. BUELL:  That's fine with me, Your Honor.

19          JUDGE ALBERS:  You'll have to submit your petition  
20     by 5:00 on August 3rd.  Staff will have until 5:00  
21     August 9th to and as well as the Intervenors to  
22     respond to that.  And then we'll try to get that to

1 the Commission in time for the August 23rd meeting.

2 MS. GALIOTO: Will I have an opportunity to reply  
3 to that? I'm sorry. I don't have the rules in front  
4 of me, nor did I bring them down with my boxes, so.

5 JUDGE ALBERS: It is not specifically provided for  
6 in the code part.

7 MS. GALIOTO: I would like an opportunity to  
8 reply.

9 JUDGE ALBERS: Well, then you're running the risk  
10 then of losing your ruling from the 23rd from the  
11 Commission.

12 MS. GALIOTO: I understand that, but I have a  
13 feeling I might need --

14 JUDGE ALBERS: And I'm going to have to spend some  
15 time writing up some memos on this too. So I've got  
16 to factor my time as well.

17 So I'm afraid given what the rules provide  
18 for I've already given you an expedited schedule.  
19 Have to leave it what the rules specifically provide  
20 for, that being response from the parties, then a  
21 Commission.

22 MS. GALIOTO: I could file within a day or two.

1           JUDGE ALBERS:  You could.  But if I have to get it  
2   written by the next day, turn it in to the Commission,  
3   it's going to be a day late and dollar short, so to  
4   peak.

5           MS. GALIOTO:  Okay:

6           JUDGE ALBERS:  I'm just telling you.  I mean,  
7   you're up against a wall when you requested the  
8   expedited treatment in this case.

9           Anything else on that particular --

10          MS. GALIOTO:  I don't think I'm missing anything,  
11   Your Honor.  I think --

12          MR. BALOUGH:  Are we moving the brief, then, to  
13   the 24th?

14          MS. GALIOTO:  We're moving the brief to the 24th.  
15   And I also still need to review Mr. Bunosky's --

16          JUDGE ALBERS:  Right.  We're going to recess for a  
17   few minutes, so.

18                 September the next day for the reply briefs is  
19   a Saturday.  All right.

20                 So we'll recess at this point to have a  
21   chance to look over the items identified by  
22   Mr. Balough.

1 (Whereupon a short recess  
2 was taken.)

3 JUDGE ALBERS: Ms. Galioto, you had a chance to  
4 look at those portions of Mr. Bunosky's testimony  
5 Mr. Balough identified as potentially stemming from  
6 stricken portions of Mr. Davison's testimony.

7 Do you have any thoughts -- actually, since I  
8 don't believe those particular portions have been  
9 identified in the record, if you could you identify  
10 the page and line numbers, please.

11 MS. GALIOTO: Yes, I will, Your Honor.

12 The first portion counsel for the  
13 association's identified started on page 2, line 39,  
14 and continued to page 4, line 74.

15 And with regard to that portion, I would  
16 object to removing on page 3 starting on line 58  
17 through line 66 as well as on page 4, lines 71 to 74.  
18 I think those two portions should remain within the  
19 record.

20 JUDGE ALBERS: 58 through 66 and --

21 MS. GALIOTO: 71 through 74.

22 MR. BALOUGH: I'm sorry. 58 through 66?

1 MS. GALIOTO: Yes. 71 through 74.

2 Do you want me to explain?

3 JUDGE ALBERS: Yeah. Then I was going to give  
4 Mr. Balough a chance to look that and see what he  
5 thinks.

6 MS. GALIOTO: Sure.

7 JUDGE ALBERS: I mean, if you want to go ahead and  
8 explain your reasons, please.

9 MS. GALIOTO: The portion on page 3, 58 through 66  
10 discusss the differences between a public municipal  
11 system and a private system.

12 And that information continues to be  
13 responsive because Mr. Davison also has set forth as  
14 his Exhibit MD-1 a lot of information with regard to  
15 rates for other utility systems throughout Illinois.

16 Mr. Bunosky discusses further on page 4,  
17 which Mr. Balough has not moved to strike, that these  
18 systems discussed in Exhibit MD-1 1 are subject to the  
19 same flaw and that, again, they are largely public  
20 systems.

21 And so it is necessary to maintain lines 58  
22 through 66 to explain the dissimilarity that he then

1 discuss with regard to MD-1 on page 4.

2 MR. BALOUGH: Your Honor, the problem with that  
3 is, you know, on page -- on page 4 starting on page 82  
4 he talks about being public, but if you look on page  
5 3, starting at line 63, he's talking about the  
6 reporter's analysis. I mean, that's obviously  
7 referring to the testimony that's been stricken.

8 MS. GALIOTO: Okay.

9 MR. BALOUGH: So he does talk about public systems  
10 later on.

11 MS. GALIOTO: Well, I would not object to removing  
12 the sentence starting on line 63 that states, The  
13 inclusion of public systems in the reporter's analysis  
14 misrepresents how Aqua's rates actually compare, that  
15 sentence and the following sentence.

16 But the beginning of the paragraph from lines  
17 59 through 63 up to that point do need to be included  
18 for the explanation of the difference between the two  
19 types of systems.

20 MR. BALOUGH: And Your Honor, I would just -- I  
21 mean, the question on line 49 is, Based on the 2002  
22 publication U.S. News and World Report claims that the

1 Oak Run customers paid three times the national  
2 average. Please respond.

3 He responds. The next question is, Please  
4 explain. It's obviously referring to the U.S. News  
5 and World Report. I think to pick and choose  
6 sentences out of question that starts, Please explain,  
7 and they're explaining something about U.S. News and  
8 World Report an item that has been stricken, I think  
9 in fairness the whole question and answer should come  
10 out.

11 But he does I would note on page 4 talk about  
12 Exhibit MD-1 or public systems. And he says on line  
13 80, These public systems are not similar to Oak Run  
14 because they would be subsidized. He specifically  
15 refers to it. I think in all fairness, if that --

16 JUDGE ALBERS: That's a pretty good point. I  
17 mean, this is tying back to the question regarding the  
18 newspaper or the magazine story.

19 MS. GALIOTO: But Your Honor, the problem with  
20 counsel's reasoning is that this is prefiled written  
21 testimony. And you certainly cannot know at the time  
22 you prepare a document of this nature whether a

1 further -- whether there's going to be a portion that  
2 is stricken.

3 If the witness were on the stand and the  
4 question preceding this were stricken, the second  
5 question would have been asked differently to elicit  
6 the same information in order to respond to MD-1.

7 JUDGE ALBERS: Well --

8 MS. GALIOTO: It continues to be responsive to  
9 other testimony provided by Mr. Davison that is not  
10 stricken. And counsel's objections to Mr. Bunosky's  
11 testimony was limited to whether or not it was  
12 responsive, and this portion still is.

13 JUDGE ALBERS: I understand what you're saying.  
14 But I -- this question really ties back into the  
15 inquiry about the U.S. News and World Report article.  
16 I'm inclined to go along with Mr. Balough on that  
17 particular part.

18 What about the line 71 through 74,  
19 Mr. Balough, did you have any problem leaving that one  
20 in?

21 MR. BALOUGH: Yes, Your Honor, to the -- because  
22 as I read Mr. Davison's testimony, unless I'm

1 misreading something, the -- all the references to  
2 national averages have been taken out because that was  
3 his reference to the U.S. News and World Report.

4 The only items that are left in is MD-1,  
5 which has to do with comparisons in the state of  
6 Illinois. So unless I'm missing something -- and I  
7 certainly would be happy to be corrected on that -- I  
8 don't think that he's referring to -- anything  
9 referring to national has been taken out.

10 MS. GALIOTO: Your Honor, once again, this  
11 information continues to be responsive to MD-1.  
12 Despite the fact that there is national in the  
13 question, had the questioner known that portion would  
14 be stricken from Mr. Davison's testimony, it would  
15 have been asked to relate only to the Illinois  
16 average, which is the portion still remaining within  
17 Mr. Davison's testimony.

18 Number two, he does also without  
19 qualification or limitation to Illinois on page 8 of  
20 Mr. Davison's testimony, state, Comparatively speaking  
21 these figures are not low. That could be national.  
22 That could be Illinois.

1           So again, whether or not such an exercise or  
2   such a comparison is fruitful, it's still responsive.

3           MR. BALOUGH: Your Honor, the only thing I  
4   would note is the next question is, How do you respond  
5   to Mr. Davison's claim that operates at -- based on  
6   similar communities in Illinois, which the is exhibit  
7   that's still in. And he talks about that.

8           JUDGE ALBERS: I think you convinced me again,  
9   Mr. Balough, that that logically falls from the U.S.  
10   News and World Report article.

11           And I see what you're saying, Ms. Galioto,  
12   but I don't agree that we should be trying to  
13   re-interpret the testimony as if the stricken part was  
14   no longer there.

15           MS. GALIOTO: But Your Honor, my problem with  
16   looking at it strictly by tying questions and answers  
17   together is that if there were live witness testimony  
18   and the --

19           JUDGE ALBERS: It's not, though.

20           MS. GALIOTO: Had to respond to these portions, I  
21   would have asked the question differently.

22           JUDGE ALBERS: Well, you can't have it both ways.

1 Mr. Davison's testimony was stricken in response to  
2 your motion and this is what derived from  
3 Mr. Davison's testimony and the part that you had  
4 stricken. So you can't have it both ways.

5 MS. GALIOTO: That's your ruling.

6 JUDGE ALBERS: Okay. So I'll try to make this  
7 very clear, then.

8 With regard to Mr. Banoksy's surrebuttal  
9 testimony, Aqua Exhibit 7.0, because it is responsive  
10 to other stricken testimony beginning on page 2, line  
11 39, and ending on page 4, line 74, that testimony  
12 should be stricken.

13 JUDGE ALBERS: The second one?

14 MS. GALIOTO: Yes. The second one starting on  
15 page 12, lines 244, through page 13, Line 262, I do  
16 have some objections here as well.

17 I would agree to the removal of the first  
18 part of the answer starting on line 246 through line  
19 248. I do not agree with removing any further aspects  
20 of this testimony. My reason is that --

21 JUDGE ALBERS: I'm sorry. Which part do you want  
22 to keep, just so I'm clear?

1           MS. GALIOTO: I want to keep the question on lines  
2   244 and 245.

3           JUDGE ALBERS: Okay.

4           MS. GALIOTO: And I want to keep the answer  
5   starting with the word "I" at the end of line 248  
6   continuing through line 262.

7           JUDGE ALBERS: Okay. And why?

8           MS. GALIOTO: Because if you look at page 9 of  
9   Mr. Davison's testimony, his specific references to  
10   the Wall Street Journal article are stricken.  
11   However, he continues to testify to the profitability  
12   of the corporate parent and what impact the corporate  
13   parents' profitability has, whether it has been  
14   impacted.

15                 So that is clear if you look at line 198 as  
16   he is discussing when Aqua purchased the Oak Run  
17   division, clearly he's not talking about the Oak Run  
18   division. He's talking about the parent company.

19                 And so this information I would agree to  
20   striking lines 426 to 248 because that's specific to  
21   the Wall Street Journal article that was stricken.

22                 But the remainder of the information

1 discusses why it's inappropriate to rely on the parent  
2 company profitability in this case and so that portion  
3 should remain.

4 JUDGE ALBERS: Let me take a look at that before I  
5 hear from you, Mr. Balough.

6 MR. BALOUGH: Your Honor, as I see what's left in  
7 Mr. Davison's testimony, it's a significant effect on  
8 corporate bottom line. I know it's unlikely that this  
9 limited consumption openness hindered the  
10 profitability of the Company. And then it talks about  
11 the demographics of the community.

12 Here we're talking giving specific  
13 percentages the profitability of the Company in  
14 detail, just because the Company's -- to me, it's  
15 responsive to the Wall Street Journal article, not to  
16 his review that the Company should have known the  
17 demographics of the community.

18 I defer to your ruling on that, but I just  
19 feel that that is all responsive to the -- more to the  
20 Wall Street journal article and the president's  
21 comments as opposed to the demographics of the  
22 community.

1 MS. GALIOTO: Your Honor --

2 JUDGE ALBERS: You're going to win this one.

3 MS. GALIOTO: Okay.

4 JUDGE ALBERS: I think I agree with you,

5 Ms. Galioto. So what will be stricken then also for

6 Mr. Bunosky's surrebuttal testimony, Aqua Exhibit 7.0,

7 is beginning on line 12 -- I'm sorry -- page 12, line

8 246, ending on line 248 with the word "division." That

9 sentence is stricken.

10 MS. GALIOTO: Your Honor, I had one clarifying

11 question. I just wanted to clarify that when we went

12 through the objections to Mr. Davison's testimony, the

13 actual exhibit from which he made the Wall Street

14 Journal quotation was included in the portion that was

15 struck.

16 JUDGE ALBERS: Yes. I think --

17 MR. BALOUGH: I thought so.

18 JUDGE ALBERS: Yeah. I think what we said was the

19 only remaining exhibit was for MD-1 and MD-4.

20 MS. GALIOTO: Well, MD-4 is the Philadelphia

21 Inquirer and I think he's -- where was that? That was

22 the portion that was struck on line -- page 11, 232 to

1 236.

2 And that was -- you know, I certainly intended  
3 that to be part of that objection that was stricken  
4 this morning or yesterday. I can't remember what day  
5 it was.

6 MR. BALOUGH: It was my understanding that the  
7 article was stricken.

8 JUDGE ALBERS: Yeah. I think if we did, it was  
9 just a mistake in what I said. Just want to be clear  
10 that the record is absolutely clear.

11 What attachments to Mr. Davison's testimony  
12 remain should be MD-1. I'm going to look through them  
13 here one by one to make sure I -- yes. The only that  
14 remains should be MD-1.

15 MS. GALIOTO: Thank you, Your Honor.

16 JUDGE ALBERS: Good catch. Just so the record is  
17 clear, then, MD-4, as I indicated earlier, that should  
18 not be part of the Exhibit 1.0 that was admitted for  
19 Oak Run.

20 MS. GALIOTO: Thanks.

21 Ready for the next one?

22 JUDGE ALBERS: Yes, please.

1 MS. GALIOTO: Starting on page 17, I believe --  
2 Mr. Balough, correct me if I'm wrong -- I believe you  
3 suggested starting on line 365 with, He only, and  
4 continuing through page 18 to line 373. Am I  
5 correct?

6 MR. BALOUGH: That's right.

7 MS. GALIOTO: Okay. I do not have an objection to  
8 taking out the sentence that begins, He only, on line  
9 365 and finishes with, Of this case, on 366.

10 The remainder, however, should remain because  
11 it is still responsive, still within Mr. Davison's  
12 testimony is discussion of animosity and how he feels  
13 the residents of Oak Run feel.

14 And this remaining information continues to  
15 be responsive. The only thing we really struck from  
16 Mr. Davison's testimony was actual reference to  
17 conversations and things of that nature. So  
18 everything else is still responsive.

19 JUDGE ALBERS: Which part of Mr. Davison's  
20 testimony are you looking at?

21 MS. GALIOTO: The relevant portions are page 5,  
22 page 5 starting on line 115. Still in the record

1 discussions of animosity, how he feels people feel,  
2 etc.

3 And then continuing on page 6 we left in the  
4 meetings were very contentious to say the least.

5 JUDGE ALBERS: Okay.

6 MR. BALOUGH: Your Honor, I moved to strike --

7 JUDGE ALBERS: One second, please.

8 MR. BALOUGH: Okay.

9 JUDGE ALBERS: Okay. I'm sorry. Go ahead.

10 MR. BALOUGH: Your Honor, I'm having a problem  
11 with the sentence that starts on the bottom of 366, He  
12 cannot know but can only be guessing how other  
13 individuals feel. That sounds to me as if it's  
14 responding to the portions that have been stricken.

15 I have no problem and I can accept the fact  
16 that, you know, his saying would not be reasonable for  
17 any customer to vote against that, I can see where  
18 that might be, you know, that's probably responsive.

19 But the next sentence, since any individual  
20 comments about customers have been taken out, I think  
21 that that sentence should come out as well. Certainly  
22 I think, you know, I would agree that it would not be

1 reasonable for any customer. If he wants to say that  
2 in the rest of that, that's fine.

3 But I just -- since we don't have have how  
4 individual customers feel, that next sentence should  
5 also come out.

6 MS. GALIOTO: I believe that he is testifying to  
7 his opinion that they feel animosity.

8 JUDGE ALBERS: Yeah. I agree with you,  
9 Ms. Galioto. I think that's -- I think appropriate to  
10 leave it in given what remains of Mr. Davison's  
11 testimony.

12 And you could, Mr. Balough, as far as the  
13 rest of that beginning --

14 MR. BALOUGH: The rest of it, it doesn't matter  
15 to me, Your Honor. I don't think it's -- the case is  
16 not going to rise and fall whether or not --

17 JUDGE ALBERS: Then so we're clear, also stricken  
18 from Aqua surrebuttal, Mr. Banoksy's surrebuttal  
19 testimony, Aqua Exhibit 7, is the material appearing  
20 on page 17 beginning on line 365 with the words, "He  
21 only" and ending on line 366 with the words, "Outside  
22 of this case" are stricken.

1                   And I think that was the extent of  
2   Mr. Balough's identified sections of  
3   Mr. Bunosky's testimony. Is that correct?

4                   MR. BALOUGH: That's all I found.

5                   JUDGE ALBERS: Okay. I think at this time it's  
6   probably safe to address the admission of  
7   Mr. Bunosky's and Mr. Schreyer's testimony. Nothing  
8   else that I can think of that would be taken care of  
9   in those areas. Okay.

10                  Let's go through these one at a time just to  
11   be safe. Aqua 1.00 WS, Attachments 1.1 through 1.4 WS  
12   is admitted.

13                               (Whereupon Aqua Exhibit  
14                               1.00 WS, Attachments  
15                               1.1 through 1.4 WS were  
16                               admitted into evidence.)

17                  JUDGE ALBERS: Aqua 1.00 WW, Attachments 1.1  
18   through 1.4 WW is admitted.

19                               (Whereupon Aqua Exhibit  
20                               1.00 WW, Attachments  
21                               1.1 through 1.4 WS were  
22                               admitted into evidence.)

1 JUDGE ALBERS: Aqua 1.0 OR with Attachments 1.1  
2 through 1.4 OR is admitted.

3 (Whereupon Aqua Exhibit 1.0 OR,  
4 Attachments 1.1 through 1.4 OR  
5 were admitted into evidence.)

6 JUDGE ALBERS: Aqua Exhibit 5.0, the original  
7 version with Attachment A is admitted.

8 (Whereupon Aqua Exhibit 5.0,  
9 Attachment A was admitted  
10 into evidence.)

11 JUDGE ALBERS: And Aqua Exhibit 7.0 why don't we  
12 call it revised since we've changed -- we just  
13 discussed striking a few portions here and there.  
14 Aqua Exhibit 7.0 Revised with Schedule 7.1 through  
15 7.10 and Attachment A is admitted.

16 (Whereupon Aqua Exhibit 7.0  
17 Revised, Schedules 7.1 through  
18 7.10, Attachment A were  
19 admitted into evidence.)

20 JUDGE ALBERS: And with the exception of 7.0  
21 Revised, the remainder are all on e-Docket. Correct?

22 MS. GALIOTO: Yes, Your Honor. Yes, Your Honor.

1       That is correct.

2               It was my understanding you wanted us to also

3       file a new -- now, I guess we do not need to file a

4       new original -- I'm sorry -- for 5.0. That one is

5       already on e-Docket.

6               JUDGE ALBERS: Right.

7               And then as far as 7.0 Revised, will you file

8       on e-Docket or send it straight to me or --

9               MS. GALIOTO: What is easier for you?

10              JUDGE ALBERS: It doesn't matter. I want to know

11       where to look for it. That's all.

12              MS. GALIOTO: We will file on e-Docket and send

13       you a copy via e-mail?

14              JUDGE ALBERS: That's fine. And you will black

15       out the respective portions of the --

16              MS. GALIOTO: Yes. Right.

17              JUDGE ALBERS: Okay. Thank you.

18              MS. BUELL: Is it possible for the other parties

19       to be served as well?

20              MS. GALIOTO: I was planning on serving the other

21       parties, Linda.

22              MS. BUELL: Thank you.

1 JUDGE ALBERS: I think that takes care of all of  
2 Mr. Bunosky's exhibits. Correct me if I'm wrong.

3 MS. GALIOTO: I think that's correct, Your Honor.

4 JUDGE ALBERS: Turning to Mr. Schreyer, Aqua  
5 Exhibit 2.0, Attachments 2.1 and 2.2 is admitted.

6 Aqua Exhibit --

7 MS. GALIOTO: Is that the OR?

8 JUDGE ALBERS: Yeah. Better add that there.

9 (Whereupon Aqua Exhibit 2.0 OR,  
10 Attachments 2.1 and 2.2 were  
11 admitted into evidence.)

12 JUDGE ALBERS: Aqua Exhibit 2.0 WS with  
13 Attachments 2.1 and 2.2 WS are admitted.

14 (Whereupon Aqua Exhibit 2.0 WS,  
15 Attachments 2.1 and 2.2 WS were  
16 admitted into evidence.)

17 MS. GALIOTO: Your Honor, as you're going -- I  
18 don't mean to interrupt, but as you're going through  
19 these, both of those also had Exhibits A through D.

20 Schreyer direct testimony, he had Schedules  
21 2.1 through 2.2 and then Exhibits A through D as in  
22 dog.

1 JUDGE ALBERS: Okay. Thank you. All right.

2 Then just so we're clear, with regard to  
3 Woodhaven Sewer, Aqua Exhibit 2.0, Attachments A  
4 through D are also admitted.

5 (Whereupon Aqua Exhibit 2.0 OR  
6 Attachments A through D were  
7 admitted into evidence.)

8 JUDGE ALBERS: And all that's on e-Docket?

9 MS. GALIOTO: Yes. Are those A through D also  
10 admitted with respect to Oak Run?

11 JUDGE ALBERS: I just haven't gotten that far.

12 MS. GALIOTO: Oh, I'm sorry.

13 JUDGE ALBERS: Aqua Exhibit 2.0 WW with  
14 Attachments 2.1 and 2.2 WW with Attachments A through  
15 D are admitted.

16 (Whereupon Aqua Exhibit  
17 2.0 WW, Attachments 2.1 and  
18 2.2 WW were admitted into  
19 evidence.)

20 JUDGE ALBERS: Those are on e-Docket?

21 MS. GALIOTO: Yes, they are, Your Honor.

22 JUDGE ALBERS: And Aqua Exhibit 2.0 OR with

1 Attachments 2.1 and 2.2 along with attached Exhibits A  
2 through D are admitted.

3 And Aqua Exhibit 6.0, the original version  
4 with Schedule 6.1 and Attachments A through D are  
5 admitted.

6 (Whereupon Aqua Exhibit 6.0,  
7 Schedule 6.1, Attachments A  
8 through D were admitted into  
9 evidence.)

10 JUDGE ALBERS: And Aqua Exhibit 8.0 with  
11 Attachments 8.1 OR -- let me phrase that better.  
12 Schedule 8.1 OR, Schedule 8.1 WW and 8.1 WS as well as  
13 Attachments A through D are admitted.

14 (Whereupon Aqua Exhibit 8.0,  
15 Schedules 8.1 OR, 8.1 WW, 8.1  
16 WS, Attachments A through D  
17 were admitted into evidence.)

18 JUDGE ALBERS: And that takes care of all of  
19 Schreyer's exhibits. Is that correct?

20 MS. GALIOTO: Yes.

21 And do you want us to also file the Schreyer  
22 surrebuttal as a revised and serve it the same way we

1 will Bunosky's surrebuttal?

2 JUDGE ALBERS: Could you refresh my memory of what  
3 we changed in Mr. Schreyer's surrebuttal?

4 MS. GALIOTO: The whole basis of the interlocutory  
5 appeal.

6 MR. BALOUGH: Page 14 through 18 --

7 JUDGE ALBERS: Oh, yeah.

8 MS. GALIOTO: If you want to admit them, I'm up  
9 for that.

10 MS. BUELL: No. That's correct, Your Honor. You  
11 did strike those pages.

12 JUDGE ALBERS: I remember that now.

13 MS. GALIOTO: I could have let you fall on a  
14 technicality there. I hope you recognized that I rose  
15 to the occasion.

16 JUDGE ALBERS: Okay. As you proposed, 8.0  
17 revised, we'll call it that.

18 MS. GALIOTO: And for --

19 JUDGE ALBERS: I will correct myself. I said A  
20 through D and it should be A through C.

21 MS. GALIOTO: And for Schreyer rebuttal it was  
22 amended at Schedule 6.1 and Exhibits A through D on

1 the original rebuttal.

2 JUDGE ALBERS: Yes. That was my intent. That was  
3 not clear. That was what I intended to admit.

4 Anything further on Mr. Schreyer?

5 MS. GALIOTO: No. I'm sorry.

6 JUDGE ALBERS: That's fine. Want to be clear.

7 Then after today, we will see your petition  
8 for interlocutory review on August 3rd. And Staff and  
9 Intervenors will have a chance to respond by August  
10 9th.

11 And we'll try to get that on the Commission's  
12 August 23rd regular open meeting agenda. That also  
13 assumes they still have the regular open meeting.  
14 Those things sometimes get canceled.

15 So beyond that, I would just at this point  
16 ask the parties when they are putting their briefs  
17 together -- well, first I intend to take the issues  
18 that I received this past Monday and from the issues  
19 that are still in dispute as well as what's been  
20 settled and put together an outline and have that  
21 served in a few days and ask that you use that on your  
22 briefs just so I can tell -- it will be easier for me

1 to put it all together, basically.

2 MS. GALIOTO: Your Honor, I did have an objection  
3 with regard to the Woodhaven Association's issues  
4 list. They identified an issue that I have seen no  
5 testimony on whatsoever, and that was the late-payment  
6 fees. It was a brand- new issue to me on the issues  
7 list.

8 JUDGE ALBERS: I wasn't trying to use those words.

9 MR. BALOUGH: I just never heard an objection to  
10 an issues list.

11 MS. GALIOTO: Well, I mean, I don't know if it's  
12 technically an objection, but it's not an issue in the  
13 case. And I don't know why all of the sudden it  
14 appears as an issue.

15 JUDGE ALBERS: Somebody raised it and didn't put  
16 any testimony, be an easy one for you to address.

17 MS. GALIOTO: Finally an easy one.

18 JUDGE ALBERS: It's a misunderstanding, you know,  
19 as far as I don't think was --

20 MS. GALIOTO: I don't actually have a copy of it  
21 because it came after I was in Springfield and I don't  
22 have anything printed off. But I reviewed it online.

1 JUDGE ALBERS: Is it for Woodhaven or Oak Run?

2 MS. GALIOTO: I believe it's the Woodhaven.

3 JUDGE ALBERS: Okay. Late charges on customer  
4 accounts, association seeks clarification on this  
5 issue.

6 MS. GALIOTO: Yes.

7 JUDGE ALBERS: Okay. Well, off the top of my  
8 head, I can't recall any testimony on that issue  
9 either, so.

10 MR. BALOUGH: I think the purpose of the issues  
11 list was to identify all the areas that we thought we  
12 might have cross-examination on and that we chose not  
13 to have cross-examination on that issue. It was an  
14 issue which we were seeking clarification on so it's  
15 not --

16 JUDGE ALBERS: You're not contending there's any  
17 problem with the late fees?

18 MR. BALOUGH: No.

19 MS. GALIOTO: Okay.

20 JUDGE ALBERS: In any event, then got that taken  
21 care of. I'll get an outline to the parties in a few  
22 days.

1           And certainly if someone sees something wrong  
2   with the outline, just, you know, send me and the  
3   other parties an e-mail. I don't intend for the  
4   outline to be any point of contention for anyone. I  
5   want to use as a tool to help us all.

6           And then when you get to a part of outline  
7   where you don't think there's any issues, I ask that  
8   you briefly summarize, you know, what you think has  
9   been agreed to just so I can be clear as to what's  
10   been agreed to as well.

11           And after that, I don't think I have any other  
12   notes or anything for today. We've changed the  
13   initial brief due date to August 24th and your reply  
14   brief due date to September 6th.

15           And anything else today?

16           Oh, one other thing I do remember now.  
17   Ms. Buell, I think you asked about having a date  
18   certain for all the revised exhibits would be  
19   submitted.

20           MS. BUELL: Yes, Your Honor.

21           JUDGE ALBERS: How much time do you folks think  
22   you'd need for that?

1           MR. BALOUGH: Monday at the latest for me.

2           MS. GALIOTO: I would ask a little bit longer  
3 because my attention is going to be turned elsewhere.  
4 Say Friday for me. I'll try to get it -- I would just  
5 prefer to get the appeal out and then turn my  
6 attention to the revised exhibitis. I think we all  
7 know what's stricken and what's not.

8           JUDGE ALBERS: Any problem with that?

9           MS. BUELL: I'm sorry. What was that date, Your  
10 Honor?

11          JUDGE ALBERS: Suggested August 5th as a date  
12 certain for all the revised testimony to be in by.

13          MS. BUELL: That's fine, Your Honor. And then  
14 we've changed the schedule with respect to initial  
15 briefs and reply briefs. Could we just set a tentative  
16 remainder of the schedule? Is it your intention that  
17 that remain in place?

18          JUDGE ALBERS: Well, be a function of when a  
19 proposed order comes out. So have to adjust it  
20 accordingly.

21          MS. BUELL: Okay. Thank you.

22          JUDGE ALBERS: I don't intend to -- I'm shooting

1     for August 30th. I'll tell you that, whatever date it  
2     was you --

3           MS. BUELL: Actually, I think you gave yourself  
4     until September 30th.

5           JUDGE ALBERS: Yeah. Very generous of me.

6           That was a date the parties suggested, wasn't  
7     it?

8           MS. BUELL: I think that we had talked about  
9     September 30th and then briefs on exceptions October  
10    7th and reply briefs on exceptions October 17th.

11          JUDGE ALBERS: Yeah. I mean, we'll -- I certainly  
12    intend to shoot for September 30th. And you know, if  
13    it's off by a day or so, try to move the parties  
14    replies exceptions deadlines.

15          Anything further? Any reason to leave the  
16    record open?

17          MS. BUELL: Nothing further from Staff, Your  
18    Honor.

19          MS. GALIOTO: I don't know if you need to leave  
20    the record open in case of appeal. I think that it  
21    doesn't matter if the record's left open for that.

22          JUDGE ALBERS: I don't think it matters either.

1 If the Commission disagrees with me --

2 MS. GALIOTO: We'll reopen it. Okay.

3 JUDGE ALBERS: -- to accommodate whatever ruling  
4 needs to be made.

5 Thank you, everyone. And with that, I'll  
6 mark the record heard and taken.

7 HEARD AND TAKEN

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